

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF TEXAS
3 HOUSTON DIVISION

4 UNITED STATES OF AMERICA . 4:22-CR-612
5 VERSUS . HOUSTON, TEXAS
6 EDWARD CONSTANTINESCU, . DECEMBER 18, 2023
7 ET AL, . 10:00 A.M.
8

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10 TRANSCRIPT OF MOTION HEARING
11 BEFORE THE HONORABLE ANDREW S. HANEN
12 UNITED STATES DISTRICT JUDGE

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1 **PROCEEDINGS**

2 THE COURT: 22-CR-612, United States versus Edward
3 Constantinescu, et al.

4 This hearing is obviously right now in open
5 court. It has to do with some discovery measures.

6 Mr. Williams, do I understand it that you don't
7 want it to go forward in open court?

8 And I will let you lead off.

9 MR. WILLIAMS: Judge, we have one issue that -- you're
10 right -- is related to a matter we filed ex parte under seal
11 and it's been advised to my colleague that you wanted to take
12 up today.

13 THE COURT: The reason I did, and the reason I thought
14 it didn't matter whether it was ex parte or not, is because the
15 government knows all about it.

16 MR. WILLIAMS: I don't know that they know about our
17 subpoena -- our 17(c) matter because it was filed ex parte
18 under seal. I don't think they know the substance of this
19 request. I believe Mr. Ford's is well-known, which I thought
20 was the main --

21 THE COURT: And it may be.

22 MR. WILLIAMS: What he is seeking and what they are
23 seeking to quash is substantively different than what we were
24 looking for.

25 THE COURT: Yours may not be the subject of the

10:05 1 hearing then.

2 MR. WILLIAMS: I hope not.

3 THE COURT: I don't know what it is.

4 MR. WILLIAMS: Outside the presence of the state -- of
10:05 5 the U.S. government, I would be happy to explain it to you.

6 THE COURT: Let me shift over to Mr. Carter.

7 Mr. Carter, I scheduled this hearing because of
8 you, not you personally, but the government. You had an issue
9 with some subpoenas.

10:05 10 Who wants to address that?

11 MR. ARMSTRONG: Yes. Good morning, Your Honor. Scott
12 Armstrong for the United States. My colleague Mr. Liolos will
13 address this issue.

14 THE COURT: Okay.

10:05 15 MR. LIOLOS: Good morning, Judge. John Liolos on
16 behalf of the United States.

17 This is the first we have heard about
18 Mr. Rybarczyk's subpoena, so we are just here to address
19 Mr. Constantinescu's subpoenas.

10:05 20 It came to our attention that they served at
21 least 11 subpoenas on individuals previously appearing on our
22 witness list, all but one of whom are alleged victim witnesses
23 in this case, and the last one is an ostensible whistleblower.

24 The Supreme Court's strict standard in Nixon
10:06 25 applies to these trial subpoenas, and on their face, these

1 subpoenas don't satisfy those factors and nothing that the
2 defendant has proffered since satisfies those factors. And
3 it's their burden to satisfy the factors.

4 Just to give the Court some brief examples of why
5 that is, four of the seven requests seek documents from 2019,
6 which is a year before the charges in this case. That
7 demonstrates that they are overbroad, they are burdensome on
8 these alleged victims, and that they are just a fishing
9 expedition, which is precluded by Nixon. That's the fourth
10 Nixon factor.

11 Another example of why these are overbroad is
12 they seek entire categories of documents, like the entire
13 export of their Twitter file. That necessarily can't be
14 evidentiary under Nixon, which it is required to be, because
15 there is going to be reams of hearsay in there. There's going
16 to be a ton of things that just can't come in, and there is no
17 evidentiary basis for it. That's the type of request that is
18 routinely precluded under the Nixon factors.

19 Other examples: One of the Nixon factors is that
20 the material can't be obtainable by reasonable due diligence
21 prior to trial, but a number of these requests can be knocked
22 out with Google searches. For example, they want all of the
23 victim witnesses's other social media accounts. They have made
24 no showing that they have even tried to search the Internet for
25 them. That is required under Nixon.

1 They want statements that they have made about
2 the defendants or their social media accounts. They have made
3 no showing that they have gone online and tried to find said
4 statements. Moreover, they seek all such statements, not
5 specific ones that they have identified, which even if you look
6 at Nixon, in that case, the parties seeking the information
7 made specific evidentiary showings, put on witnesses that were
8 parties to the cause at issue and established the relevancy and
9 potential admissibility of the content of the calls. These
10 requests don't come anywhere near that, and the defendant
11 hasn't met their burden.

12 Furthermore, they claim in their response to have
13 already received some documents from one party that they have
14 subpoenaed, and they have refused to share that with us, which
15 Rule 17 permits both parties access, if the Court will order
16 it. And we would request that the Court do so.

17 Unless the Court has specific questions about
18 some of these requests -- and I have the subpoena here -- we
19 can tick through the specific requests, if it is helpful to
20 you, but --

21 THE COURT: Who wants to respond?

22 MR. FORD: Thank you, Your Honor. Matthew Ford on
23 behalf of Defendant Edward Constantinescu.

24 We served these subpoenas on witnesses based on
25 the government's theory of the case. Right? What they are

10:09 1 arguing is my client when onto Twitter and posted something
2 about a stock. This witness read that. Caused them to
3 purchase the stock. My client then sold the stock at some
4 point but didn't alert them to the fact of them selling it, and
10:09 5 then this individual supposedly lost money.

6 So we are seeking really two categories of
7 documents. One is trading records for these witnesses, which
8 we don't have. And two, their social media activity.

9 Now what we tried to do with the social media
10:09 10 requests, there are two sorts: One going to Twitter and one
11 going to Discord. We are not able to obtain this any other
12 way.

13 If you look at Twitter's website, you need a
14 warrant to get that information. The Stored Communications Act
10:09 15 is going to bar us from doing that.

16 What we tried to do is make it as easy as
17 possible on the witnesses. There's a button -- you can go onto
18 your Twitter login. You click a button. It downloads and
19 archives everything that you have done on Twitter, and then you
10:10 20 would submit that to us so we would have all of the tweets that
21 they made about these stocks, any messages or times that they
22 have interacted with the defendants or other individuals about
23 trading stocks, sort of all of this information.

24 There's other specific information that is
10:10 25 difficult to obtain online, such as every time they liked a

1 post. So let's say that an individual goes onto his Twitter,
2 sees somebody other than my client, right, saying, Let's, you
3 know, buy this stock, it's going to go to the moon, and they
4 like it. Right? We think we should get access to it. We are
5 going to cross-examine them on that exact fact. We are going
6 to try to prove that there were many people talking about the
7 same stocks.

8 The reason we can't obtain it for the reasons the
9 government is mentioning, one, people's Twitter accounts are --
10 can be made private. They either are or can be made private.
11 In that case, we would not be able to access any of the
12 information from Twitter.

13 Two, they can delete things. So it's entirely
14 possible that in 2021, they had posted something on their
15 Twitter and then chose to delete that. Then we would have no
16 access to it. If we receive the actual file --

17 THE COURT: If it's deleted, can you recover it?

18 MR. FORD: Twitter will have it. Because when you
19 send us the archive, it is basically a list of every keystroke
20 that you did. If you liked something and then changed your
21 mind two weeks later and unliked it, it will have both the like
22 and then the subsequent unliking.

23 As far as any concerns, you know, about privacy,
24 or that sort of thing, there's a protective order in place.
25 And I can assure you, the government has given us literally

10:11 1 tens of millions of pages. The last thing I need is a pile of
2 more irrelevant documents, and I don't care about witness's
3 communications that have nothing to do with this case.

4 For us, we were trying to think about what is the
10:11 5 easiest way for the witnesses to get us this information, and
6 the reality is if we sent them a targeted subpoena that said,
7 Go through every time you have liked a post over the past
8 two years, read every one and then send us individually every
9 single time a screenshot of when you liked that post, it would
10:12 10 potentially take weeks and weeks versus sending the data to us.
11 We have the capacity and the ability, through our document
12 vendor, to sift through and filter and get the stuff.

13 Obviously, we are willing to work with the
14 government or, more specifically, with the individual witnesses
10:12 15 to make sure they are not feeling overburdened. But the ones
16 we have spoken to on the phone, they are not saying what the
17 government is claiming. They do not view this as being overly
18 burdensome, and I think it's really just a matter of a click of
19 a button to get us this information. That's on the social
10:12 20 media side.

21 With regards to the trade records, it's actually
22 outstanding that they are saying we should not have access to
23 these individuals' trading records. If they want to take the
24 stand and get up and say, I read your client's Twitter post and
10:12 25 that caused me to buy it, and he didn't disclose it, so I

10:13 1 didn't sell it and I lost money, I would like to see the trade
2 records. That's what is going to corroborate the time that
3 they made the sales.

4 THE COURT: Let me hear from the government.

10:13 5 Stay right here.

6 MR. LIOLOS: Your Honor, as to the trading records,
7 they already have the relevant trading records.

8 The way that we found these individuals is
9 through the SEC blue sheets and seeing that they traded these
10:13 10 stocks on the days of the post in question. We have already
11 turned that over with our preliminary discovery. So for each
12 of these, they can see in the tickers and time periods at issue
13 when the individual traded, when they bought, when they sold.
14 And they have produced to us some of them, their underlying
10:13 15 trading records more broadly, and we have, of course, turned
16 that over, as well. So the records that they are seeking are
17 all of their trading for tickers and time periods that aren't
18 at issue in this case that can't be relevant or evidentiary. I
19 don't see a viable theory where that can come in.

10:13 20 As to the social media requests, what they are
21 seeking is broader than what we even have for the defendants'
22 social media accounts in this case. They want everything in
23 their Twitter account.

24 THE COURT: Well, I'm hearing the fight we have in the
10:14 25 civil side all the time. I don't hear you saying they don't

1 get that information. What I hear you saying is what they
2 asked for is too much.

3 MR. LIOLOS: What they asked for is way beyond what is
4 relevant and admissible in this case, which is what Nixon
5 requires the request to be. It needs to be specific, and there
6 needs to be a viable theory of evidence. And it's purely
7 speculative. They have to make a showing that they can't get
8 this without due diligence, and they are speculating that these
9 accounts are private.

10 What they need to do is show that they have tried
11 to google for the account and that they can't get it. That's
12 what Nixon requires.

13 MR. FORD: Your Honor, if I may. Let me just address
14 the blue sheet issue. We have received some blue sheets for
15 some stock tickers, not all of them. But what blue sheets are,
16 FINRA or the SEC is making a request to a specific firm, a
17 broker dealer, regarding a certain trade at a specific time and
18 a specific stock.

19 So the fact that the SEC went to TD Ameritrade
20 and asked TD Ameritrade for their trade log for that day
21 doesn't answer the question of whether a witness traded with
22 Etrade, traded with Interactive Brokers or any of the other
23 many, many large firms that people use for broker dealers for
24 their trading. So the blue sheets don't really help us in that
25 regard. They are incomplete.

1 We want these individuals' trade data for all
2 their accounts. Right? Because they could have been trading
3 the same stock in multiple accounts.

4 As far as obtaining the stuff, what I see is
5 really my -- well, there's the privacy issue. We have looked
6 at the accounts, but there is an authenticity issue that's
7 going to wind up extending trial. Right? Which is if I go to
8 one of these witnesses and say, Hey, look, there is a
9 screenshot that I took of something you supposedly liked off
10 the Internet, they are going to say, I have never seen that. I
11 don't know what that is.

12 I don't know how to authenticate it, which means
13 we have to wait for our defense presentation. We're going to
14 have to call my paralegal or whoever is going to testify that
15 she took the screenshot, and then we are going to have to go
16 back and coax the witness into admitting that they did that.

17 THE COURT: Let me stop you both for a minute.

18 Mr. Williams, did you want to --

19 MR. WILLIAMS: Yes, Your Honor. I hate to interrupt.
20 That's not true. I like to interrupt.

21 This raises an issue that actually we will go
22 ahead and deal with in open court because of judicial economy,
23 and it's out there. Our 17(c) request requests trading
24 records -- 26 sets of records from a half dozen companies for
25 the alleged victims. And so the substantive difference is we

1 are not going to get them from the victim. We are trying to
2 get them from the third party, the actual custodians, and we're
3 trying to get those records for the relevant time period of the
4 indictment, January 2020 to April 2022.

5 To the extent Your Honor would like to address
6 that in open court while considering the relevance of their
7 request --

8 THE COURT: Let me -- this is, to me, something that
9 we should work out -- that y'all should work out, and then I
10 should ultimately approve. I want to see the final work
11 product too, but within these parameters: I think the
12 defendants get this information. I mean, if you are going to
13 put somebody up on the stand that said I got hoodwinked and for
14 the three months prior, they have been trading in this stock
15 before anyone ever posted, I mean, that's relevant.

16 Now, do I think they should get anything they
17 ever posted on Twitter or, you know, all their Facebook
18 accounts or anything? No. That's not relevant. I mean, these
19 requests need to be tailored to this case and to the witnesses,
20 but I think that's the only way that the defendants can defend
21 themselves. And, I mean, there may not be -- there may be
22 smoke but no fire. I mean, they may take one look at it and
23 go, Oh, yeah, they began trading the day my guy posted. And
24 ultimately it may end up hurting them rather than helping them.
25 But the defendants I think have a right to this material.

1 Having said that, as I just said, but I will
2 repeat myself, these people aren't necessarily involved in this
3 case. I mean, they are, but they aren't. I would hope they
4 don't have a dog in the fight. They may. I don't know. But I
5 don't want over-abusive discovery. I don't want fishing
6 expeditions, but I think -- with certain tickers, certain
7 stocks during the relevant time period, I think the defendants
8 get that information.

9 Now, what I'm suggesting is while you are here,
10 Mr. Ford, Mr. Williams is here, the government is here. Why
11 don't we sit down -- take a break, sit down and look at the
12 actual subpoenas and let's tailor something that fits this case
13 that's not abusive?

14 Now, I understand your argument that maybe they
15 should try various ways and come in and tell me how they did
16 it. But if Mr. Ford is right -- and I don't hear you saying
17 he's not right. If there's a way -- there are two ways of
18 doing this. One, the victim or the victim representative has
19 to go line by line by line by line, well, that's crazy. If
20 there's a way that you can just press a button and key in and
21 produce this stuff. I will have to tell you I'm not enough of
22 a tech guy to know which is right and which isn't. But why
23 wouldn't we make it -- these are third parties. Why wouldn't
24 we take the easiest route on them, the least burdensome?

25 Go ahead.

1 MR. ARMSTRONG: Your Honor, if I may. It should not
2 be a table stake to participate in this case that you have to
3 produce as an alleged victim every single Twitter message and
4 Twitter post and every single step you took on social media.
5 That's not relevant.

6 THE COURT: I just said that. I agree with you. I
7 agree with you. But that's why the requests need to be
8 narrowed. But what I'm suggesting is that y'all sit down and
9 collaborate. But I think their comments about the stocks in
10 issue, their trading history of these stocks, I mean, that's
11 fair game.

12 MR. ARMSTRONG: Your Honor, the problem here is that
13 these subpoenas are a Trojan horse because Mr. Ford is saying
14 he has not received the trade records for the relevant time
15 periods for the episodes in this case. That is just flatout
16 false. I cannot underscore that enough.

17 The justification for the subpoenas on themselves
18 rest on a premise that is completely refuted by the discovery
19 in this case. They have their trading records two ways to
20 Sundays. They have it from the blue sheets, which detail every
21 single person who traded in these stocks in the relevant period
22 and their trading account. They also have it for 99 percent of
23 the witnesses, the actual hard copy productions that the
24 witnesses gave to us. So the idea that they don't have the
25 trading records, that we have not produced them and given them

1 up, is just flatout wrong and false. We have given them twice.

2 MR. FORD: If I may. I went over the blue sheet
3 issue. Again, what we are talking about is a request from
4 either the FINRA or SEC to a specific firm. We do not -- one,
5 we don't have blue sheets for all the stock tickers they have
6 raised. So there's that. But even if we do, it is incomplete
7 data because it reflects only the trading that occurred to a
8 specific firm. For example, TD Ameritrade that the SEC
9 requested the information from.

10 Even a request from NASDAQ for a blue sheet,
11 which we don't have, would not reflect all trading because not
12 all trading occurs on the same exchange. Some occurs off
13 exchange. So it doesn't represent it.

14 As far as what they are talking about, trade
15 records, what we have for many of the witnesses, it appears
16 they took screenshots on their phones of some of the trading
17 they did. They provided them to the FBI, and then that has
18 been produced to us. But what I'm talking about is an
19 export -- and I think Mr. Williams, as well. We're talking
20 about an export of data from all of their broker dealers in
21 which they traded this particular stock symbol that we are
22 seeking. Right? So if they are going to say that my client
23 was responsible for NAKD, you know, causing their trading, I
24 would like to have -- know all of their broker dealers and all
25 of the trading they did. And if not, screenshots that the

1 witness took of some of the trades that they think will
2 ultimately help them recover restitution, or money in the SEC
3 case. I want to see their full records.

4 MR. ROSEN: Judge, if I could step in --

5 THE COURT: Why don't you identify yourself because
6 the court reporter can't see who it is.

7 MR. ROSEN: Eric Rosen on behalf of Mr. Rybarczyk.

8 Just very briefly, to weigh in about the blue
9 sheets, I spent a lot of time in that data. The problem is
10 also, there are generally only one or two dates. So you have
11 one or two days of these massive trading histories for tens of
12 thousands of people.

13 A lot of the witnesses didn't sell right away or
14 didn't buy during that time period, so it's just a small slice
15 of data. Some of these people sold weeks or months later.

16 Why they bought, why they sold, it is extremely
17 relevant to how we are going to go about proving our case. So
18 the fact that they have given blue sheets for one day -- and by
19 the way, it hasn't been for all the stocks. We are still
20 missing a lot of blue sheet data for many of the tickers at
21 issue, but the fact that there's just one or two days, it's
22 irrelevant.

23 Also, one other thing, we need to get these
24 people's trading histories, because how they are buying in and
25 out of stocks, not just the ones that are relevant here, but we

1 are talking -- these people are investing in meme stocks. Day
2 in and day out, stocks that pop, one hundred percent, two
3 hundred percent in one day.

4 How are they evaluating when to buy and when to
5 sell? Is it: They did this ten times before? Not relying on
6 the defendants here and did the same pattern over and over
7 again? Negating the fact that they were hoodwinked when one of
8 the defendants tweeted something out. For us, that is
9 extremely important.

10 So we have only gotten one or two stocks for a
11 lot of these people that the stocks were their, quote/unquote,
12 victims. But you start looking through the blue sheet data and
13 looking and seeing some of these other people, they are in and
14 out of these stocks constantly, like normal day traders. Their
15 buying and selling is not dependent on the defendants.

16 That's why when we served the 17(c) subpoena, we
17 are asking for all of these trading records because they are
18 extraordinarily relevant to how these, quote/unquote, victims
19 are going to be presented at trial.

20 MR. ARMSTRONG: Your Honor, if I may. The issue here
21 seems to be, at best, at absolute best, that this information
22 is impeachment material. That in and of itself should doom
23 these subpoenas from the jump. So what we are doing is we are
24 asking these individuals who are not sophisticated actors to
25 comply with a ream of requests.

1 Now, it may be the middle ground is that they can
2 issue these subpoenas to third parties, to the actual
3 brokerages who have sophisticated means to process and produce
4 this information, but to require an individual who is in the
5 middle of nowhere to have to have the sophistication and the
6 wherewithal to respond to inadmissible subpoenas from the jump
7 is just a step too far.

8 THE COURT: That's why I suggested we do it the
9 easiest way. I'm not trying to overburden these people. I
10 mean, as I said, they are third parties.

11 Whether they are mad at the defendants or mad at
12 the government for getting them involved in this or don't care
13 one way or the other, I don't think we ought to overburden
14 them. But here's what I want. I want y'all to sit down while
15 we are here -- I'm going to take a break -- and talk about
16 this. See if y'all can work this out.

17 If you can't, I will rule. But I think the
18 defendants get the trading records for a period of time, let's
19 say two or three months. I'm just throwing this out. You guys
20 know the facts so much more than I do, but before the
21 indictment and maybe after another month or six weeks
22 afterwards, so a window, and they get that and they get
23 specific -- the trading records and they get specific Internet
24 tweets, whatever, whatever, but specific to this case. I mean,
25 I don't care if they are tweeting their girlfriend or whatever.

10:27 1 That's out.

2 MR. FORD: We don't either, by the way.

3 THE COURT: But specific as to these stocks, the
4 indictment stocks, as far as Internet communications, I think
10:27 5 -- I mean, they are entitled -- maybe some guy has a tweet that
6 says, Did you see what Mr. Matlock recommended? Only an idiot
7 would buy this stock. They are entitled to that.

8 MR. FORD: I can do you an even better one. I only
9 got to their first witness alphabetically. So they have
10:28 10 accused with regard to a stock ticker called BBI my client of
11 committing securities fraud for purchasing the stock at
12 33 cents and claiming it was going to go to 50 cents. This is
13 their first supposed victim witness tweeting on his own,
14 nothing to do with my client, that he believed BBI's strong buy
10:28 15 with a price prediction of three to four dollars. And then he
16 tweets -- long after my client was out of the position, he
17 tweets that BBI's strong buy rating with an average price
18 target of 267. So the allegation is that my client defrauded
19 this individual by saying he thought a stock was going to 50
10:28 20 cents, who on his own was tweeting that the stock he thought
21 was going to go to four dollars. And not to be outdone, he
22 tweets on April 21st, so in the week or two that this
23 conspiracy supposedly happened. He says he's definitely
24 holding to 50 cents.

10:29 25 I suspect that when he gets called to the stand

1 and we get those trade records, this individual will have sold
2 his stock before it ever reached 50 cents. So that's what we
3 are looking for. It is how we are going to prove the case.

4 Frankly, I think it is offensive to the Court
5 that this individual would even be called, as he is engaging in
6 the identical conduct the government is claiming my client
7 engaged in and was wrongful. It is representative of the way
8 everybody was acting on Twitter during this time period,
9 tweeting memes, making claims about prices and so forth.

10 THE COURT: Mr. Ford, let me suggest that everybody
11 doing it is not a good defense.

12 MR. ARMSTRONG: Your Honor, also, this is just like
13 patently absurd. This demonstrates that they have information
14 and they can get it with their own reasonable diligence. And
15 so the idea that this information is like hiding somewhere, and
16 we're the cause of that is just beyond ridiculous.

17 THE COURT: I'm going to allow them to have the
18 subpoenas. I'm allowing you to exercise some narrowing
19 function to narrow it to this case. Because I don't think they
20 ought to get, as I said, extraneous material, but I do think
21 they have a right to see their trading records. If you are
22 going to put them on the stand and say they are victims, they
23 have a right to cross-examine.

24 MR. ARMSTRONG: Your Honor, I understand your position
25 and I understand what you are saying. But isn't the result of

10:30 1 that that they can cut 17(c) subpoenas to the brokerage houses,
2 as apparently Mr. Williams did, instead of burdening the
3 individuals with these broad requests?

4 THE COURT: If we can get them from the brokerage
10:30 5 houses, I'm fine with that. They can't get from the brokerage
6 houses, you know, their tweets and their participation in
7 social media.

8 MR. LIOLOS: Your Honor, he just demonstrated that he
9 is capable of doing that, which is one of the Nixon factors,
10:31 10 and admitted that he has only done it with one of the 11
11 witnesses. That fails Nixon.

12 THE COURT: Well, maybe y'all can -- need to educate
13 me, but I'm hearing Mr. Ford say -- and I'm not hearing anyone
14 arguing -- that there is an easy way to do this.

10:31 15 MR. FORD: We think for both the social media accounts
16 and the trade records, very easy. We actually provided the
17 link, the Twitter link. All they have to do is click a button
18 and download all the data. So that's simple.

19 It depends on what firm they are using, what
10:31 20 broker dealer, but we know for all the main ones, TD, IB,
21 Etrade and so forth, TradeZero, the ones people typically use,
22 you just basically log-on and you will click. Your 1099-Bs for
23 the past couple years will come up right away. They are very
24 easily accessible.

10:31 25 When we say burden, this is stuff I think in

1 total that witnesses can obtain in under ten minutes.

2 MR. ARMSTRONG: Your Honor, the standard is not how
3 difficult is it to get. The standard is a three-part test
4 under Nixon, and they are just fishing for reams of
5 information.

6 I think Your Honor understands our position that
7 these are patently improper.

8 THE COURT: Broadly, I'm overruling it.

9 Specifically, I want y'all to sit down and narrow
10 these requests. I'm not giving them every time you have been
11 on the Internet, but I am allowing them every time they talked
12 about one of these stocks within, say, a month before the
13 allegations began and a month after.

14 MR. FORD: Understood. Thank you, Your Honor.

15 THE COURT: Let's get Mr. Williams involved and let's
16 get the input from everybody so we can come up with one set. I
17 don't want to burden these people with multiple sets either.

18 If you think -- and I'm thinking down the road
19 here. I mean, it may be better to get at least the trading
20 records from the brokerage houses, not only because it doesn't
21 burden the individuals but because we can get them in
22 admissible form and we don't have to worry about somebody
23 trying to, you know, get up and prove up: Is this all of them?
24 Well, I don't know. We can get them in admissible form from
25 the brokerage houses, but let's go ahead and get them now.

10:33 1 We know we are looking at a spring trial setting
2 that I'm going to hold y'all to, but let's be reasonable in the
3 request part. Let's be -- and I understand the government's
4 overall objection. I'm overruling that objection.

10:34 5 One thing I am granting the government is they
6 get a copy of everything.

7 I think, you know -- I know I come from the civil
8 side of the street, but we all go to trial knowing what each
9 other has. I'm not against a good surprise, but for the most
10:34 10 part, both sides ought to know the trading records. There's no
11 surprises there. They either traded or they didn't trade. The
12 time either fits the government's scenario or it doesn't.

13 Why don't y'all take 20 minutes, just sit around
14 the table, and, Mr. Williams, I think you and Mr. Rosen ought
10:35 15 to be involved in this too.

16 MR. WILLIAMS: Yes, Your Honor. I'm forwarding the
17 government copies of these.

18 THE COURT: And let's get this put to bed so we can
19 get the process rolling here.

10:35 20 All right. It's 10:35 now. I'm going to come
21 back in at 11:00 and see how you are doing.

22 If you get done, let Rhonda know.

23 MR. ARMSTRONG: Thank you, Your Honor.

24 MR. WILLIAMS: Thank you, Judge.

10:35 25 *(Court recessed at 10:35 AM)*

11:11 1 (Court resumed at 11:11 AM)

2 THE COURT: It looks like the government has called in
3 reinforcement.

4 Where are we, Mr. Ford?

11:14 5 MR. FORD: We have reached a resolution on nearly
6 everything. There are seven requests.

7 I will do this quickly. Request 7, which we are
8 seeking communications about any of the Twitter handles that
9 any of the codefendants have. The government has agreed to
10 that.

11 Number 6, we are seeking copies of communications
12 with the -- I'm sorry -- regarding any of the codefendants,
13 about them. The government has agreed to that.

14 Number 5, we were originally seeking from
11:15 15 January 2019 to April 2022. We are changing it to -- we
16 modified it for your time period, so it will be -- and this
17 goes for the whole thing -- now December 2019, a month before,
18 to August 2022, so three months after. And that's -- request 5
19 is stuff they have about any of these 54 stock tickers that we
11:15 20 are now talking about. We are in agreement on that.

21 Number 4: We have significantly narrowed it. We
22 just want two types of information. We want to know what their
23 broker dealers -- brokerage houses that they used were. If you
24 used just used TD Ameritrade, you just say TD Ameritrade. If
11:16 25 you had six different broker dealers, you just tell us who they

1 are.

2 THE COURT: With the thought that you are then going
3 to go to the brokerage house?

4 MR. FORD: Yeah. Well, Mr. Williams -- that's going
5 to cover it. The one thing that we don't think is covered by
6 Mr. Williams's subpoena is 199-B forms. This is one of the
7 points of disagreement.

8 What this is is it's a form that will be
9 self-authenticating from the broker dealer that will show the
10 trades that the individual placed and then the profit or loss
11 that they made. We just think it's the easiest, simplest, most
12 narrow way to obtain that information.

13 THE COURT: Now, do you get a 1099-B for every
14 specific trade?

15 MR. FORD: It will show everything. What it is is
16 it's a document that's going to show sort of a summary up
17 front. So you traded game stock, made a million dollars. And
18 then you traded Amazon and you lost \$20.

19 After that, it will show the actual summaries day
20 by day of all of the trades that you placed, whether they were
21 buys or sales. So that's what the document is. It was the
22 subject of the earlier hearing that we had when we were seeking
23 to get the codefendants' 1099-Bs. So we would like to be able
24 to obtain that same thing from these witnesses who will testify
25 about their trading activity.

1 And the reason we think it should extend, you
2 know, sort of beyond the 54, we would like to see their general
3 trading activities. We suspect, based on what we have seen so
4 far, that these are individuals who -- some of them traded in
5 many stocks, and we would like to be able to show that their
6 trading was consistent or inconsistent, as the case may be,
7 across their trading activity rather than modified with regard
8 to a specific tweet or something that they saw by one of the
9 codefendants.

10 THE COURT: Go ahead. I see the obvious problem with
11 it.

12 MR. ARMSTRONG: If I may. We have now had an ironic
13 shift in the case. The defendants were arguing for months that
14 we have to have a narrowly-tailored case that is limited to
15 specific tickers and specific time periods.

16 And so what we did is we distilled our case down
17 from 396 episodes to 55, as the Court is now aware. So now the
18 defendants want to open the door to every single trade that a
19 potential victim made, which includes some of the stuff that we
20 specifically excised from the case to not go down rabbit holes.
21 So they now want to question witnesses about, Hey, you relied
22 on this meme stock that the defendants very well may have been
23 pumping and dumping through their own false and misleading
24 statements.

25 Does that require us now to then have to

11:19 1 introduce that stuff that we chose on the front end to excise
2 from the case from the defendants' request? This is a bridge
3 way too far.

4 THE COURT: Ryan O'Neal, may he rest in peace.

11:19 5 I'm going to side with the government on this
6 issue, although I think you are going to get the same
7 information when they take the stand.

8 I'm not going to preclude you from
9 cross-examining him on, Look, you trade all the time. You
11:19 10 know, you don't need these guys to trade. You have been doing
11 it for years.

12 And I think you will have that information. I'm
13 trying to think if there's a way to narrow it, and right now,
14 one is not coming to mind.

11:20 15 On a different topic, does this resolution,
16 Mr. Williams, take care of your problem?

17 MR. WILLIAMS: Judge, I think what you may have said
18 foreshadowed your ruling on our remaining dispute.

19 We have an agreement with respect to the time
11:20 20 periods involved and that they would agree to give us the trade
21 data for the 54 tickers. We would like to have all of their
22 trade data for that time period, and the government disagrees.

23 MR. ARMSTRONG: Your Honor, on this point, I think
24 this just crystallizes exactly what the issue is here. We are
11:20 25 requesting duplicative subpoenas, both from the victims and

1 from the trading houses.

2 THE COURT: What?

3 MR. ARMSTRONG: And from the trading houses.

4 If Your Honor's ruling is that these trading
5 records theoretically could be admissible under some theory,
6 which we will discuss at a later point, but why don't we just
7 cut this off at the pass. They can issue their 17(c) subpoenas
8 to the trading houses and then take the burden off of the
9 victims to find this information and then give it to us because
10 they are going to be getting it from the trading records --
11 from the trading houses.

12 THE COURT: I thought that's what we were doing. Did
13 I misunderstand? I thought from the victims we were getting
14 the names of the trading houses.

15 MR. ARMSTRONG: That's fine. No issue with that.

16 THE COURT: Okay. And then Mr. Williams in his
17 subpoena -- I don't care who issues it -- is going to go to the
18 trading houses directly.

19 MR. WILLIAMS: Yes, sir. Based upon a ruling today of
20 whatever the scope is, I would agree with Your Honor and
21 suggest that we get the subpoenas for what we know about out
22 now so we can get them back in a timely way. And then if we
23 find additional trading houses from the complainants, then
24 there may be a round two or three of subpoenas going out, as
25 well, as soon as we have that information. To me, it's a

1 question of making sure we get this in a timely way that is
2 usable by our trial date.

3 MR. ARMSTRONG: And I think that would totally moot
4 half of the subpoena at issue here, because if they get the
5 information from the horse's mouth, which is the brokerages.

6 THE COURT: What do you think gets mooted?

7 MR. ARMSTRONG: The trading requests. So request 5
8 specifically and 4 about --

9 THE COURT: I don't have those in front of me, so you
10 are going to have to tell me what they say.

11 MR. ARMSTRONG: Number 4 is document submission to
12 show statements and information you contend you relied upon
13 while trading any of the following stocks.

14 That's a little bit different reading it again.
15 That's a little bit broader, which I appreciate, but the
16 trading records, for sure, are documents sufficient to show for
17 the time period the trading records essentially.

18 MR. FORD: We have negotiated with Mr. Williams. We
19 are going to let him do. If we want to attach the 1099-B onto
20 his request, it's a different document. The trading record
21 appears differently than a 1099-B, which is a summary. For
22 example, a trading record will not necessarily show your profit
23 or loss in a stock ticker whereas the 1099-B is. So there is a
24 definite reason we are seeking it.

25 If we want to have Mr. Williams do it, I'm fine

11:23 1 with it.

2 THE COURT: Isn't the brokerage house the one that
3 issues the 1099. Right? Let's take it out of the individual
4 requests, and let's talk about -- I'm concerned about this
11:23 5 every-trade-you-have-ever-made issue. And I understand the
6 relevance. I understand what you guys are saying, that they
7 have this pattern of trading that was long established, you
8 know, both before and after and so...

9 MR. WILLIAMS: Here's a solution that I had before
10 arguing about it. If we are going to get this data, it is
11 probably just easier to get all of it, and we can sort it. And
12 then we can have motions in limine about what we want to do it,
13 if it is outside the 54 and relevant later. I mean, if they
14 think, Oh, you want -- because we are going to have to trade
11:24 15 exhibit lists. We are going to have to trade witness lists.
16 We are going to have to trade expert reports.

17 So if we go outside the data of the 54, they are
18 going to know about it well in advance of trial, and I think
19 everybody in this room knows nobody here is afraid to write
11:24 20 motions. So you will get motions in limine about that.

21 Why narrow it now? Let's get it. And then if
22 they think we are going to misuse it, they can write about it.

23 THE COURT: Why does that not sound like a compromise?

24 MR. LIOLOS: Your Honor, that's exactly the sort of
11:24 25 fishing expedition that is precluded under Nixon. It is not to

1 wait until motions in limine that they have to articulate their
2 specific theory of relevance. It is right now when they are
3 trying to issue the Rule 17 subpoenas under that standard.

4 We can sensibly limit this to the tickers and
5 time periods at issue. It's very easy to do.

6 MR. ROSEN: Each one of these victims allegedly is
7 going to testify from the FBI reports that we have seen that
8 they wouldn't have bought these stocks but for the tweeting and
9 they certainly wouldn't have bought the stocks if they knew
10 people were selling. We are certainly allowed to cross-examine
11 them and say, Hey, you have been trading in and out of these
12 meme stocks for months. We just don't know what they are yet.
13 We are talking about something we can't articulate fully
14 because we don't have the records. That is why Mr. Williams's
15 argument makes so much sense. We can be back here in a month
16 arguing about which specific ones are relevant.

17 THE COURT: I'm going to allow the 1099-Bs through
18 Mr. Williams for the same time period we have talked about.

19 Now, let me emphasize something to everybody, and
20 I'm not accusing anybody, because I don't think we have had a
21 problem so far. But this is private, sensitive information for
22 people that don't have anything to do with this lawsuit, and I
23 do not want to see this in public anywhere. I mean, I'm
24 serious as a heart attack when I say that.

25 These people have a right to privacy. They kind

1 of waived it by participating in this lawsuit, and I agree with
2 your right to cross-examine them on the trade, but I do not
3 want to see this information on the Internet, in the Chronicle.
4 It's not fair to them, number one.

5 And, number two, we're not going to try -- and
6 this goes for the defendants too -- a bunch of extraneous
7 trading, whether it be the victims' trading, the defendants'
8 trading. We are going to hone in on what this is because, I
9 mean, you know, we are going to get this tried in the time
10 period I have been talking about. And I will put timing limits
11 on y'all. So I'm giving you a heads-up right now that we're
12 going to go right to the meat of this thing and to the
13 allegations. And I'm going to allow you to cross-examine, to
14 the extent the defendants take the stand and to the extent
15 there are other witnesses's various -- I will use the word
16 trading habits, or tweeting habits. But we are not going to
17 try 10,000 extraneous trades. I mean, one, it's impossible.
18 It asks too much of the jury, and it's just something we can't
19 impanel a jury to do. And, two, it doesn't have anything to do
20 with the allegations against the defendants.

21 So I'm giving both sides fair warning that we are
22 going to go to the meat of this thing. We are going to try it,
23 you know. And believe me, I have been giving the manner in
24 which we are going to try this case a lot of thought throughout
25 reading your motions, trying to figure out how we are going to

1 do this. And, you know, I'm probably going to ask the
2 defendants -- and I'm throwing this out; I'm not ordering
3 this -- but to have, you know, kind of a -- one of their group
4 be the chief cross-examiner, for instance, of one of these
5 witnesses. But I'm not going to allow every defense lawyer to
6 get up there and retread the same ground that we have done time
7 and time again. You know, I mean, once the primary
8 cross-examination is over, I mean, if one of the other
9 defendants wants to get up and say, Have you ever heard of my
10 client? No. And sit down. That's a pretty good cross if you
11 get a witness to say they have never heard of you. So we are
12 going to have -- I'm going to put some limits on the
13 examination. I'm going to put some limits on the
14 cross-examination of witnesses, especially these people that
15 don't have anything to do with this lawsuit.

16 Now, I'm ordering this discovery because I think
17 the defendants have a right to it, and they have a right to
18 see -- for instance, if there's an argument that witness
19 number A, he was trading like this before, he was trading like
20 this during, he was trading like this after. I mean, that
21 certainly, you know, is supportive of an argument that he
22 didn't rely on anything the defendants did.

23 But, you know, let's keep focus though on what
24 the actual allegations in the indictment is -- are.

25 Go ahead.

11:30 1 MR. ARMSTRONG: I'm going to hold my tongue for now,
2 Your Honor.

3 THE COURT: You know, I am a -- and I have said it
4 before. I'm a product of the civil side, and I'm a product of,
11:30 5 okay, you know, both sides are allowed certain discovery, but
6 the fact you know some stuff doesn't make it admissible and
7 doesn't make it relevant. And we're going to have to -- we
8 will flush this out in detail before we ever let a juror set
9 foot in here, but I don't want anybody to interpret the fact
11:30 10 that I'm allowing this to say, The judge must think this is
11 admissible. I'm also threatening everybody within an inch of
12 your life if this information becomes public, because I don't
13 think these individuals deserve that.

14 Is there anything else we can resolve?

11:31 15 MR. FORD: Yes. This resolves one half of it.

16 The next thing has to do with the social media.

17 On document request 3, we just want the names of
18 other accounts. You can have multiple Twitter accounts, so if
19 you have got six different Twitter accounts, can we just have
11:31 20 the handle for each one? That's it. Noncontroversial.

21 Request 1 has to do with Twitter.

22 MR. ARMSTRONG: I'm sorry, Mr. Ford. 2B is where we
23 do have the controversy.

24 MR. FORD: So request 1 has to do with Twitter.

11:31 25 Request 2 has to do with Discord. We have agreed to narrow the

11:31 1 scope again, as Your Honor said, so we will be seeking only
2 from December 2019 to August 2022.

3 What we have run into with this is coming up with
4 a creative way that we can get this information that doesn't
11:32 5 completely tax and burden these people, as I said, by requiring
6 them to go over it.

7 We have two presentations from -- we have two
8 sort of recommendations, suggestions from our side. One is we
9 can give the witnesses an option, meaning option one, you can
11:32 10 export it all. Option two, you can manually go through it and
11 find the responsive stuff.

12 One of the witnesses we spoke to on the phone
13 just said, Hey, what if I just give you my login and you can
14 just take whatever you need?

11:32 15 We said, We're not going to do that. But that is
16 at least one of the responses we have got.

17 The second thing, which I was going to suggest,
18 and you will have already dealt with the issue, is there is a
19 protective order in place, and so we continue to abide by the
11:32 20 protective order and not release any information.

21 It would be useful to have clarification as to
22 when we can publicly disclose it, meaning in a motion. Once we
23 get to trial, I presume we are going to have to disclose some
24 of this stuff, but I don't anticipate it being an issue. We
11:33 25 are not looking through this for sensitive stuff. We really

1 want to know about their trading habits, the way they are
2 talking about it. And that's all we would be looking for.

3 Because Twitter doesn't give us an option for a
4 more narrow request, Discord, number 2, does. And the issue
5 the government has is we're requesting any conversations on
6 your Discord, such as direct messages, that pertain to
7 investments, stock or financial matters.

8 MR. ARMSTRONG: Including --

9 MR. FORD: And so we think it is all fair game. It
10 all is relevant to how they traded and how they perceived the
11 Discord messages. The government is saying it should be
12 limited to the 54. I see practical issues on how we do that.
13 If somebody is having a conversation about a specific stock
14 ticker, it could go on and on with messages back and forth.
15 Again, we are asking the witness to read through and make a
16 determination as to whether these 27 messages all pertain to
17 that stock ticker. So it seems cumbersome, so we would like to
18 have all of that information, anything regarding investment,
19 stocks or financial matters on their Discord --

20 THE COURT: I agree with the government on this. I
21 think we limit it with this caveat: I mean, if the witness
22 says, Hey, look, I don't want to go through and look at all of
23 these, I mean, I'm giving the witness the option. If they are
24 going to produce them all, they can produce them all. And I'm
25 saying this, as I said earlier, not knowing what the technology

11:34 1 is, but I'm sure a lot of these people are just going to say,
2 you know, there's one way I can just push a button. They are
3 going to take that way. And that puts the onus on both sides
4 to go through that stuff. But as a matter of what -- how the
11:34 5 subpoena reads, I want it limited.

6 MR. ARMSTRONG: Your Honor, here is kind of the
7 fulcrum on the social media activity. They are essentially
8 asking for a dump of an individual's entire Discord and entire
9 Twitter.

11:35 10 I think, being the most generous, the most
11 appropriate request is what we did not object to in 6 and 7,
12 which is communications you have regarding the defendants and
13 copies of any communications you have with their accounts.
14 That strikes me as conceivably relevant --

11:35 15 THE COURT: My problem with that is if it has to do
16 with the stocks at issue, I mean, they could be communications
17 not involving the defendants, but they could be about the
18 defendants. They can be -- they could be Mr. Ford texting or
19 communicating with Mr. Williams, Hey, did you see what so and
11:35 20 so says?

21 MR. ARMSTRONG: That's easy. We can tack on the
22 specific stocks that are at issue in the 55 to six or seven,
23 but to require an individual to have to choose between either
24 giving everything in their social media activity or having it
11:36 25 being narrowly tailored, I think the answer is very clear, that

1 we try to narrow it on the front end.

2 THE COURT: And that's what I just said. I want it
3 narrowly tailored on the front end.

4 MR. ARMSTRONG: Excellent.

5 THE COURT: But the caveat is if the witness would
6 rather do it the other way, I'm giving the witness the option
7 to do that.

8 MR. FORD: We are going to present two options. The
9 first will be, When you get your Twitter data, you can download
10 the whole thing and give it to us. We understand the
11 protective order.

12 The second option will be if it has to do with
13 any of these named codefendants or any of these 54 stock
14 tickers, you can go through, select that and give it to us.

15 THE COURT: And I'm okay with that.

16 MR. ARMSTRONG: Thank you, Judge.

17 MR. FORD: I think that resolves everything.

18 Thank you, Your Honor.

19 THE COURT: All right. And I have heard from
20 Mr. Williams and Mr. Rosen and Mr. Ford. I'm sure we have
21 representatives of the other defendants here. If you have -- I
22 don't want these people to be barraged with subpoenas. I don't
23 want the trading houses to be barraged with subpoenas. If
24 there is something not included in here that you think you
25 need, talk to the government, talk to Mr. Williams, talk to

11:37 1 Mr. Ford, and let's get them in one document. This is not to
2 see how many subpoenas we can send to TD Trading House, or
3 whatever the name of it is.

4 This sounds like, the way we have talked, it
11:37 5 ought to cover everybody and ought to cover the stocks at
6 issue.

7 MR. ARMSTRONG: Your Honor, recognizing I have not
8 seen Mr. Williams's subpoena, are those early return subpoenas?

9 THE COURT: Mr. Williams, what are they?

11:37 10 MR. WILLIAMS: They are. And obviously we have
11 rewritten to incorporate changes today from this hearing. Once
12 we get the data, with the Court's instruction, we will share
13 it.

14 MR. FORD: Your Honor, the additional request on this
11:38 15 is if we can get a return data on them rather than doing the
16 trial date.

17 THE COURT: I think we ought to try to get it as soon
18 as reasonably possible, realizing, you know, we are sitting
19 here on December 18th. We have two weeks of holidays. But,
11:38 20 you know, I would think a return date at least by late January,
21 if we can get that, so both sides have it. Because my thought
22 is, one, you are going to have to go through them all, both
23 sides are, and it is going to be a pain in the you-know-what to
24 do this. But, two, as we work our way to trial, I mean, I'm as
11:38 25 serious as I can be about limiting cross-examination, limiting

1 direct, and vice versa, because we are going to have a hard
2 enough time getting a jury to commit for as long as this trial
3 may take, and we are not going to, you know, elongate the trial
4 needlessly.

5 I will have to tell you my favorite prosecutor
6 when I was in Brownsville would say, you know, what's your
7 name, what do you do, what do you know about this. Almost
8 literally. His directs were 20 minutes. I realize that's not
9 this case, but, you know, let's plan on both sides getting to
10 the heart of it.

11 All right. Thank you.

12 MR. ARMSTRONG: Thank you, Your Honor.

13 MR. FORD: Thank you, Your Honor.

14
15 *(Court adjourned at 11:39 A.M.)*

16 * * * *

17 I certify that the foregoing is a correct transcript from
18 the record of proceedings in the above-entitled cause.

19
20 Date: December 20, 2023

21 */s/ Mayra Malone*

22 -----
23 Mayra Malone, CSR, RMR, CRR
24 Official Court Reporter
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<p>MR. ARMSTRONG: [24] 6/11 17/1 17/12 20/20 23/12 23/24 25/2 26/23 29/12 30/23 31/3 31/15 32/3 32/7 32/11 37/1 37/22 39/8 40/6 40/21 41/4 41/16 42/7 43/12</p> <p>MR. FORD: [19] 8/22 10/18 13/13 18/2 22/2 22/8 24/15 25/14 27/5 28/4 28/15 32/18 37/15 37/24 39/9 41/8 41/17 42/14 43/13</p> <p>MR. LIOLOS: [5] 6/15 12/6 13/3 24/8 33/24</p> <p>MR. ROSEN: [3] 19/4 19/7 34/6</p> <p>MR. WILLIAMS: [12] 5/9 5/16 5/22 6/2 6/4 14/19 26/16 26/24 30/17 31/19 33/9 42/10</p> <p>THE COURT: [46]</p>	<p>267 [1] 22/18</p> <p>27 [1] 39/16</p> <p>2B [1] 37/22</p>	<p>Act [1] 9/14</p> <p>acting [1] 23/8</p> <p>activities [1] 29/3</p> <p>activity [5] 9/8 28/25 29/7 40/7 40/24</p> <p>actors [1] 20/24</p> <p>actual [7] 10/16 15/2 16/12 17/23 21/2 28/19 36/24</p> <p>actually [3] 11/21 14/21 24/16</p> <p>additional [2] 31/23 42/14</p> <p>address [5] 6/10 6/13 6/18 13/13 15/5</p> <p>adjourned [1] 43/15</p> <p>admissibility [1] 8/9</p> <p>admissible [6] 13/4 25/22 25/24 31/5 37/6 37/11</p> <p>admitted [1] 24/10</p> <p>admitting [1] 14/16</p> <p>advance [1] 33/18</p> <p>advised [1] 5/11</p> <p>afraid [1] 33/19</p> <p>after [7] 21/21 22/16 25/13 27/18 28/19 33/8 36/20</p> <p>afterwards [1] 21/22</p> <p>again [6] 18/3 20/7 32/14 36/7 38/1 39/15</p> <p>against [2] 26/9 35/20</p> <p>agree [6] 17/6 17/7 30/20 31/20 35/1 39/20</p> <p>agreed [3] 27/9 27/13 37/25</p> <p>agreement [2] 27/20 30/19</p> <p>ahead [5] 14/22 16/25 25/25 29/10 36/25</p> <p>aided [1] 4/17</p> <p>al [2] 1/7 5/3</p> <p>alert [1] 9/4</p> <p>all [41] 5/15 6/22 7/22 8/4 9/20 9/23 12/17 12/25 13/15 14/1 15/17 18/5 18/11 18/12 18/20 18/24 18/24 19/19 20/17 24/17 24/18 24/20 25/23 26/8 26/20 28/20 30/9 30/21 33/11 38/10 39/2 39/9 39/10 39/16 39/18 39/22 39/24 39/24 41/19 42/22 43/11</p> <p>allegation [1] 22/18</p> <p>allegations [4] 25/13 35/13 35/20 36/24</p> <p>alleged [4] 6/22 7/8 14/25 17/3</p> <p>allegedly [1] 34/6</p> <p>allow [4] 23/17 34/17 35/13 36/5</p> <p>allowed [2] 34/10 37/5</p> <p>allowing [3] 23/18 25/11 37/10</p> <p>Almost [1] 43/7</p> <p>alphabetically [1] 22/9</p> <p>already [4] 8/13 12/7 12/10 38/18</p> <p>also [7] 1/20 4/4 17/22 19/10 19/23 23/12 37/11</p> <p>although [1] 30/6</p> <p>am [5] 25/11 26/5 26/25 27/1 37/3</p> <p>am a [1] 37/3</p> <p>Amazon [1] 28/18</p> <p>AMERICA [1] 1/4</p> <p>Ameritrade [5] 13/19 13/20 18/8 27/24 27/24</p> <p>ANDREW [1] 1/10</p> <p>another [2] 7/11 21/21</p> <p>answer [2] 13/21 40/25</p> <p>anticipate [1] 38/24</p> <p>any [15] 9/11 9/21 10/11 10/23 13/22 27/8 27/9 27/12 27/19 32/13 38/20</p>
<p>\$</p> <p>\$20 [1] 28/18</p>	<p>3</p> <p>33 cents [1] 22/12</p> <p>33139 [1] 3/9</p> <p>3700 [1] 2/5</p> <p>396 [1] 29/17</p>	
<p>/</p> <p>/s [1] 43/21</p>	<p>4</p> <p>407 [1] 3/8</p> <p>4:22-CR-612 [1] 1/4</p>	
<p>0</p> <p>02110 [1] 2/17</p>	<p>5</p> <p>50 [1] 22/19</p> <p>50 cents [3] 22/12 22/24 23/2</p> <p>515 [1] 4/14</p> <p>54 [7] 27/19 29/2 30/21 33/13 33/17 39/12 41/13</p> <p>55 [2] 29/17 40/22</p>	
<p>1</p> <p>10,000 [1] 35/17</p> <p>1000 [1] 1/17</p> <p>1001 [1] 3/15</p> <p>1099 [1] 33/3</p> <p>1099-B [4] 28/13 32/19 32/21 32/23</p> <p>1099-Bs [3] 24/22 28/23 34/17</p> <p>10:00 [1] 1/7</p> <p>10:35 [2] 26/20 26/25</p> <p>11 [2] 6/21 24/10</p> <p>11:00 [1] 26/21</p> <p>11:11 [1] 27/1</p> <p>11:39 [1] 43/15</p> <p>12-3 [1] 3/9</p> <p>1207 [2] 3/12 3/18</p> <p>1400 [1] 1/23</p> <p>1401 [1] 3/23</p> <p>1500 [1] 2/9</p> <p>17 [7] 5/17 8/15 14/23 20/16 24/1 31/7 34/3</p> <p>18 [1] 1/6</p> <p>18th [1] 42/19</p> <p>1900 [1] 3/23</p> <p>199-B [1] 28/6</p>	<p>6</p> <p>600 [1] 4/6</p> <p>612 [2] 1/4 5/2</p> <p>620 [1] 2/5</p>	
<p>2</p> <p>20 [1] 43/20</p> <p>20 minutes [2] 26/13 43/8</p> <p>20005 [1] 1/23</p> <p>2019 [4] 7/5 27/15 27/17 38/2</p> <p>2020 [1] 15/4</p> <p>2021 [1] 10/14</p> <p>2022 [4] 15/4 27/15 27/18 38/2</p> <p>2023 [2] 1/6 43/20</p> <p>21st [1] 22/22</p> <p>22-CR-612 [1] 5/2</p> <p>225 [1] 2/16</p> <p>2300 [1] 1/17</p> <p>2323 [1] 4/6</p> <p>26 [1] 14/24</p>	<p>7</p> <p>75201 [1] 4/7</p> <p>77002 [3] 1/18 3/16 4/15</p> <p>77006 [1] 2/14</p> <p>77008 [1] 3/5</p> <p>77010 [1] 3/24</p> <p>77019 [2] 3/13 3/19</p> <p>78701 [1] 2/9</p> <p>78738 [1] 2/5</p>	
	<p>8</p> <p>8004 [1] 4/14</p> <p>803 [1] 3/15</p> <p>819 [1] 2/13</p>	
	<p>9</p> <p>902 [1] 3/5</p> <p>919 [1] 2/8</p> <p>99 percent [1] 17/22</p>	
	<p>A</p> <p>A.M [2] 1/7 43/15</p> <p>abide [1] 38/19</p> <p>ability [1] 11/11</p> <p>able [4] 9/11 10/11 28/23 29/5</p> <p>about [48]</p> <p>above [1] 43/18</p> <p>above-entitled [1] 43/18</p> <p>absolute [1] 20/21</p> <p>absurd [1] 23/13</p> <p>abusive [2] 16/5 16/13</p> <p>access [5] 8/15 10/4 10/11 10/16 11/22</p> <p>accessible [1] 24/24</p> <p>account [3] 12/23 13/11 17/22</p> <p>accounts [14] 7/23 8/2 10/9 12/22 13/9 14/2 14/3 14/6 15/18 24/15 37/18 37/19 40/13</p> <p>accused [1] 22/10</p> <p>accusing [1] 34/20</p> <p>across [1] 29/7</p>	

<p>A</p> <p>any... [4] 39/5 40/13 41/13 41/13</p> <p>anybody [2] 34/20 37/9</p> <p>anyone [2] 15/15 24/13</p> <p>anything [8] 15/16 15/18 34/22 35/19 36/15 36/22 37/14 39/18</p> <p>anywhere [2] 8/10 34/23</p> <p>apparently [1] 24/2</p> <p>appearance [1] 4/10</p> <p>APPEARANCES [4] 1/12 1/24 2/18 4/1</p> <p>appearing [1] 6/21</p> <p>appears [2] 18/15 32/21</p> <p>applies [1] 6/25</p> <p>appreciate [1] 32/15</p> <p>appropriate [1] 40/11</p> <p>approve [1] 15/10</p> <p>April [3] 15/4 22/22 27/15</p> <p>April 2022 [2] 15/4 27/15</p> <p>April 21st [1] 22/22</p> <p>archive [1] 10/19</p> <p>archives [1] 9/19</p> <p>are [130]</p> <p>aren't [3] 12/17 16/2 16/3</p> <p>arguing [5] 9/1 24/14 29/13 33/10 34/16</p> <p>argument [4] 16/14 34/15 36/18 36/21</p> <p>Armstrong [2] 1/21 6/12</p> <p>around [1] 26/13</p> <p>articulate [2] 34/1 34/13</p> <p>as [44]</p> <p>ASHCROFT [1] 2/8</p> <p>ask [1] 36/1</p> <p>asked [3] 13/2 13/3 13/20</p> <p>asking [4] 20/17 20/24 39/15 40/8</p> <p>asks [1] 35/18</p> <p>Assistant [1] 1/16</p> <p>ASSOCIATES [1] 2/13</p> <p>assure [1] 10/25</p> <p>attach [1] 32/19</p> <p>attack [1] 34/24</p> <p>attention [1] 6/20</p> <p>Attorney [3] 1/16 3/8 3/12</p> <p>August [2] 27/18 38/2</p> <p>August 2022 [2] 27/18 38/2</p> <p>Austin [2] 2/5 2/9</p> <p>authenticate [1] 14/12</p> <p>authenticating [1] 28/9</p> <p>authenticity [1] 14/6</p> <p>Avenue [3] 1/23 2/8 4/6</p> <p>average [1] 22/17</p> <p>aware [1] 29/17</p> <p>away [2] 19/13 24/23</p>	<p>32/4 33/14 34/14 34/20 35/8 36/16 37/12 39/3 42/21 43/1</p> <p>becomes [1] 37/12</p> <p>bed [1] 26/18</p> <p>been [11] 5/11 14/2 15/14 18/18 19/19 25/10 29/22 30/10 34/11 35/10 35/23</p> <p>before [13] 1/10 7/6 15/15 20/5 21/20 23/2 25/12 27/17 33/8 33/9 36/19 37/4 37/8</p> <p>began [2] 15/23 25/13</p> <p>behalf [3] 6/16 8/23 19/7</p> <p>being [4] 11/17 38/24 40/10 40/25</p> <p>believe [2] 5/19 35/23</p> <p>believed [1] 22/14</p> <p>best [2] 20/21 20/21</p> <p>better [2] 22/8 25/19</p> <p>between [1] 40/23</p> <p>beyond [3] 13/3 23/16 29/2</p> <p>bit [2] 32/14 32/15</p> <p>blue [13] 12/9 13/14 13/14 13/15 13/24 17/20 18/2 18/5 18/10 19/8 19/18 19/20 20/12</p> <p>Boston [1] 2/17</p> <p>both [13] 8/15 10/21 14/17 24/15 26/10 30/25 33/8 35/21 37/5 40/3 42/21 42/22 43/9</p> <p>bought [4] 12/13 19/16 34/8 34/9</p> <p>Boulevard [2] 2/13 3/5</p> <p>break [2] 16/11 21/15</p> <p>bridge [1] 30/2</p> <p>brief [1] 7/4</p> <p>briefly [1] 19/8</p> <p>broad [1] 24/3</p> <p>broader [2] 12/21 32/15</p> <p>broadly [2] 12/15 25/8</p> <p>broker [8] 13/17 13/23 18/20 18/24 24/20 27/23 27/25 28/9</p> <p>brokerage [8] 24/1 24/4 24/5 25/20 25/25 27/23 28/3 33/2</p> <p>brokerages [2] 21/3 32/5</p> <p>Brokers [1] 13/22</p> <p>Brownsville [1] 43/6</p> <p>Bs [3] 24/22 28/23 34/17</p> <p>bunch [1] 35/6</p> <p>burden [7] 7/3 8/11 24/25 25/17 25/21 31/8 38/5</p> <p>burdening [1] 24/2</p> <p>burdensome [3] 7/7 11/18 16/24</p> <p>button [6] 9/17 9/18 11/19 16/20 24/17 40/2</p> <p>buy [7] 10/3 11/25 19/14 20/4 22/7 22/14 22/17</p> <p>buying [2] 19/24 20/15</p> <p>buys [1] 28/21</p>	<p>care [5] 11/2 21/12 21/25 30/16 31/17</p> <p>Carlos [1] 3/7</p> <p>Carter [3] 1/16 6/6 6/7</p> <p>case [28] 6/23 7/6 8/6 8/25 10/11 11/3 12/18 12/22 13/4 15/19 16/3 16/12 17/2 17/15 17/19 19/3 19/17 21/24 23/3 23/19 29/6 29/13 29/14 29/16 29/20 30/2 35/24 43/9</p> <p>categories [2] 7/12 9/6</p> <p>cause [3] 8/8 23/16 43/18</p> <p>caused [2] 9/2 11/25</p> <p>causing [1] 18/23</p> <p>caveat [2] 39/21 41/5</p> <p>cents [5] 22/12 22/12 22/20 22/24 23/2</p> <p>certain [4] 13/17 16/6 16/6 37/5</p> <p>certainly [3] 34/9 34/10 36/21</p> <p>certify [1] 43/17</p> <p>changed [1] 10/20</p> <p>changes [1] 42/11</p> <p>changing [1] 27/15</p> <p>changing it [1] 27/15</p> <p>charges [1] 7/6</p> <p>chief [1] 36/4</p> <p>Chip [1] 3/11</p> <p>choose [1] 40/23</p> <p>chose [2] 10/15 30/1</p> <p>Chronicle [1] 35/3</p> <p>civil [3] 12/25 26/7 37/4</p> <p>claim [1] 8/12</p> <p>claiming [3] 11/17 22/12 23/6</p> <p>claims [1] 23/9</p> <p>clarification [1] 38/21</p> <p>clear [1] 40/25</p> <p>click [4] 9/18 11/18 24/17 24/22</p> <p>client [10] 9/1 9/3 10/2 18/22 22/10 22/14 22/16 22/18 23/6 36/10</p> <p>client's [1] 11/24</p> <p>coax [1] 14/16</p> <p>codefendants [4] 27/9 27/12 29/9 41/13</p> <p>codefendants' [1] 28/23</p> <p>collaborate [1] 17/9</p> <p>colleague [2] 5/11 6/12</p> <p>come [8] 7/16 8/10 12/19 16/15 24/23 25/16 26/7 26/20</p> <p>coming [2] 30/14 38/3</p> <p>comments [1] 17/9</p> <p>commit [1] 43/2</p> <p>committing [1] 22/11</p> <p>communicating [1] 40/19</p> <p>communications [8] 9/14 11/3 22/4 27/8 27/11 40/12 40/13 40/16</p> <p>companies [1] 14/24</p> <p>complainants [1] 31/23</p> <p>completely [2] 17/18 38/5</p> <p>comply [1] 20/25</p> <p>compromise [1] 33/23</p> <p>computer [1] 4/17</p> <p>computer-aided [1] 4/17</p> <p>conceivably [1] 40/14</p> <p>concerned [1] 33/4</p> <p>concerns [1] 10/23</p> <p>conduct [1] 23/6</p> <p>Congress [1] 2/8</p> <p>considering [1] 15/6</p> <p>consistent [1] 29/6</p> <p>conspiracy [1] 22/23</p>
<p>B</p> <p>back [5] 14/16 26/21 31/22 34/15 39/14</p> <p>bar [1] 9/15</p> <p>barraged [2] 41/22 41/23</p> <p>based [3] 8/24 29/3 31/19</p> <p>basically [2] 10/19 24/22</p> <p>basis [1] 7/17</p> <p>BBI [1] 22/10</p> <p>BBI's [2] 22/14 22/17</p> <p>Beach [1] 3/9</p> <p>because [27] 5/14 5/17 6/7 7/14 10/18 14/2 14/22 17/13 18/7 18/11 19/5 19/24 20/17 23/19 25/20 25/21 31/9</p>	<p>C</p> <p>call [1] 14/14</p> <p>called [4] 22/10 22/25 23/5 27/2</p> <p>calls [1] 8/9</p> <p>came [1] 6/20</p> <p>can [50]</p> <p>can't [12] 7/13 7/16 7/20 10/8 12/18 13/7 13/11 19/6 21/17 24/5 34/13 35/18</p> <p>cannot [1] 17/16</p> <p>capable [1] 24/9</p> <p>capacity [1] 11/11</p>	

<p>C</p> <p>Case 4:22-cr-00612 Document 433 Filed 12/21/23 in ESD Page 46 of 53</p> <p>CONSTANTINESCU [4] 1/6 2/3 5/3 8/23</p> <p>Constantinescu's [1] 6/19</p> <p>constantly [1] 20/14</p> <p>contend [1] 32/12</p> <p>content [1] 8/9</p> <p>continue [1] 38/19</p> <p>CONTINUED [3] 2/1 3/1 4/1</p> <p>controversy [1] 37/23</p> <p>conversation [1] 39/13</p> <p>conversations [1] 39/5</p> <p>COOPERMAN [1] 3/10</p> <p>copies [3] 26/17 27/11 40/13</p> <p>copy [2] 17/23 26/6</p> <p>Cordova [1] 3/22</p> <p>correct [1] 43/17</p> <p>corroborate [1] 12/2</p> <p>could [7] 14/2 19/4 31/5 39/14 40/16 40/17 40/18</p> <p>couple [1] 24/23</p> <p>course [1] 12/15</p> <p>court [17] 1/1 4/12 5/5 5/7 7/4 8/15 8/16 8/17 14/22 15/6 19/6 23/4 26/25 27/1 29/17 43/15 43/23</p> <p>Court's [2] 6/24 42/12</p> <p>Courthouse [1] 4/14</p> <p>cover [3] 28/5 42/5 42/5</p> <p>covered [1] 28/5</p> <p>CR [2] 1/4 5/2</p> <p>crazy [1] 16/19</p> <p>creative [1] 38/4</p> <p>cross [11] 10/5 23/23 30/9 34/10 35/2 35/13 36/4 36/8 36/10 36/14 42/25</p> <p>cross-examination [3] 36/8 36/14 42/25</p> <p>cross-examine [5] 10/5 23/23 34/10 35/2 35/13</p> <p>cross-examiner [1] 36/4</p> <p>cross-examining [1] 30/9</p> <p>CRR [2] 4/13 43/22</p> <p>crystallizes [1] 30/24</p> <p>CSR [2] 4/13 43/22</p> <p>cumbersome [1] 39/17</p> <p>custodians [1] 15/2</p> <p>cut [2] 24/1 31/7</p>	<p>December 2019 [2] 27/17 38/2</p> <p>DEEL [1] 3/3</p> <p>defend [1] 15/20</p> <p>defendant [12] 2/3 2/6 2/11 3/3 3/6 3/10 3/21 4/4 4/9 7/2 8/10 8/23</p> <p>defendants [25] 8/2 9/22 15/12 15/20 15/25 16/7 20/6 20/8 20/15 21/11 21/18 29/13 29/18 29/22 35/6 35/14 35/20 36/2 36/9 36/17 36/22 40/12 40/17 40/18 41/21</p> <p>defendants' [3] 12/21 30/2 35/7</p> <p>defense [3] 14/13 23/11 36/5</p> <p>definite [1] 32/24</p> <p>definitely [1] 22/23</p> <p>defrauded [1] 22/18</p> <p>delete [2] 10/13 10/15</p> <p>deleted [1] 10/17</p> <p>demonstrated [1] 24/8</p> <p>demonstrates [2] 7/7 23/13</p> <p>DEPARTMENT [1] 1/22</p> <p>dependent [1] 20/15</p> <p>depends [1] 24/19</p> <p>deserve [1] 37/13</p> <p>detail [2] 17/20 37/8</p> <p>determination [1] 39/16</p> <p>did [16] 5/13 10/20 14/16 14/18 16/15 18/17 18/25 20/5 20/6 22/6 24/2 29/16 31/12 36/22 40/11 40/19</p> <p>didn't [8] 5/14 9/4 11/25 12/1 19/13 19/14 26/11 36/22</p> <p>difference [1] 14/25</p> <p>different [6] 5/23 27/25 30/15 32/14 32/20 37/19</p> <p>differently [1] 32/21</p> <p>difficult [2] 9/25 25/3</p> <p>diligence [3] 7/20 13/8 23/14</p> <p>direct [2] 39/6 43/1</p> <p>directly [1] 31/18</p> <p>directs [1] 43/8</p> <p>disagreement [1] 28/7</p> <p>disagrees [1] 30/22</p> <p>disclose [3] 11/25 38/22 38/23</p> <p>Discord [7] 9/11 37/25 39/4 39/6 39/11 39/19 40/8</p> <p>discovery [6] 5/5 12/11 16/5 17/18 36/16 37/5</p> <p>discuss [1] 31/6</p> <p>dispute [1] 30/18</p> <p>distilled [1] 29/16</p> <p>DISTRICT [3] 1/1 1/1 1/11</p> <p>DIVISION [1] 1/2</p> <p>do [47]</p> <p>document [7] 11/11 28/16 28/21 32/11 32/20 37/17 42/1</p> <p>documents [6] 7/5 7/12 8/13 9/7 11/2 32/16</p> <p>does [4] 29/25 30/15 33/23 39/4</p> <p>doesn't [9] 13/21 18/13 25/20 26/12 35/19 37/6 37/7 38/4 39/3</p> <p>dog [1] 16/4</p> <p>doing [9] 9/15 16/18 20/23 23/11 24/9 26/21 30/10 31/12 42/15</p> <p>dollars [3] 22/15 22/21 28/17</p> <p>don't [49]</p> <p>done [4] 9/19 24/10 26/22 36/6</p> <p>doom [1] 20/22</p> <p>door [1] 29/18</p>	<p>down [9] 16/11 16/11 17/8 21/14 25/9 25/18 29/16 29/20 36/10</p> <p>download [2] 24/18 41/9</p> <p>downloads [1] 9/18</p> <p>dozen [1] 14/24</p> <p>Drive [2] 3/12 3/18</p> <p>due [2] 7/20 13/8</p> <p>dump [1] 40/8</p> <p>dumping [1] 29/23</p> <p>duplicative [1] 30/25</p> <p>during [4] 16/7 19/14 23/8 36/20</p> <hr/> <p>E</p> <p>each [4] 12/11 26/8 34/6 37/20</p> <p>earlier [2] 28/22 39/25</p> <p>early [1] 42/8</p> <p>easier [1] 33/11</p> <p>easiest [4] 11/5 16/24 21/9 28/11</p> <p>easily [1] 24/24</p> <p>easy [5] 9/16 24/14 24/16 34/5 40/21</p> <p>economy [1] 14/22</p> <p>educate [1] 24/12</p> <p>EDWARD [4] 1/6 2/3 5/2 8/23</p> <p>either [7] 10/10 18/4 22/2 25/17 26/11 26/12 40/23</p> <p>elongate [1] 43/3</p> <p>else [1] 37/14</p> <p>emphasize [1] 34/19</p> <p>end [4] 15/24 30/1 41/1 41/3</p> <p>engaged [1] 23/7</p> <p>engaging [1] 23/5</p> <p>enough [3] 16/21 17/16 43/2</p> <p>entire [4] 7/12 7/12 40/8 40/8</p> <p>entirely [1] 10/13</p> <p>entitled [3] 22/5 22/7 43/18</p> <p>episodes [2] 17/15 29/17</p> <p>Epley [2] 3/17 3/18</p> <p>Eric [2] 2/15 19/7</p> <p>Erin [2] 3/17 3/18</p> <p>especially [1] 36/14</p> <p>essentially [2] 32/17 40/7</p> <p>established [2] 8/8 33/7</p> <p>et [2] 1/7 5/3</p> <p>Etrade [2] 13/22 24/21</p> <p>evaluating [1] 20/4</p> <p>even [7] 7/24 8/5 12/21 18/6 18/10 22/8 23/5</p> <p>ever [6] 15/15 15/17 23/2 33/5 36/9 37/8</p> <p>every [14] 9/25 10/19 11/7 11/8 11/8 17/3 17/4 17/20 25/10 25/11 28/13 29/18 33/5 36/5</p> <p>every-trade-you-have-ever-made [1] 33/5</p> <p>everybody [7] 23/8 23/10 25/16 33/19 34/19 37/11 42/5</p> <p>everything [7] 9/19 12/22 26/6 27/6 28/15 40/24 41/17</p> <p>evidence [1] 13/6</p> <p>evidentiary [4] 7/14 7/17 8/7 12/18</p> <p>ex [3] 5/10 5/14 5/17</p> <p>ex parte [3] 5/10 5/14 5/17</p> <p>exact [1] 10/5</p> <p>exactly [2] 30/24 33/24</p> <p>examination [4] 36/8 36/13 36/14 42/25</p> <p>examine [5] 10/5 23/23 34/10 35/2</p>
<p>D</p> <p>Dallas [1] 4/7</p> <p>DANIEL [1] 4/9</p> <p>data [16] 11/10 14/1 18/7 18/20 19/9 19/15 19/20 20/12 24/18 30/21 30/22 33/10 33/17 41/9 42/12 42/15</p> <p>date [4] 32/2 42/16 42/20 43/20</p> <p>dates [1] 19/10</p> <p>day [9] 13/20 15/23 19/18 20/1 20/2 20/3 20/14 28/19 28/20</p> <p>days [3] 12/10 19/11 19/21</p> <p>DC [1] 1/23</p> <p>deal [1] 14/22</p> <p>dealer [3] 13/17 24/20 28/9</p> <p>dealers [5] 13/23 18/20 18/24 27/23 27/25</p> <p>dealt [1] 38/18</p> <p>DECEMBER [5] 1/6 27/17 38/2 42/19 43/20</p> <p>December 18th [1] 42/19</p>		

<p>E</p> <p>examine... [1] 35/13</p> <p>examiner [1] 36/4</p> <p>examining [1] 30/9</p> <p>example [4] 7/11 7/22 18/8 32/22</p> <p>examples [2] 7/4 7/19</p> <p>Excellent [1] 41/4</p> <p>exchange [2] 18/12 18/13</p> <p>excise [1] 30/1</p> <p>excised [1] 29/20</p> <p>exercise [1] 23/18</p> <p>exhibit [1] 33/15</p> <p>expedition [2] 7/9 33/25</p> <p>expeditions [1] 16/6</p> <p>expert [1] 33/16</p> <p>explain [1] 6/5</p> <p>export [4] 7/13 18/19 18/20 38/10</p> <p>extend [1] 29/1</p> <p>extending [1] 14/7</p> <p>extent [3] 15/5 35/14 35/14</p> <p>extraneous [3] 23/20 35/6 35/17</p> <p>extraordinarily [1] 20/18</p> <p>extremely [2] 19/16 20/9</p>	<p>17/13 23/10 24/13 27/4 37/22 40/18 41/20 42/1</p> <p>Ford's [1] 5/19</p> <p>foregoing [1] 43/17</p> <p>foreshadowed [1] 30/18</p> <p>form [3] 25/22 25/24 28/8</p> <p>forms [1] 28/6</p> <p>forth [3] 23/9 24/21 39/14</p> <p>forward [1] 5/7</p> <p>forwarding [1] 26/16</p> <p>found [1] 12/8</p> <p>four [3] 7/5 22/15 22/21</p> <p>fourth [1] 7/9</p> <p>Franklin [1] 2/16</p> <p>Frankly [1] 23/4</p> <p>fraud [1] 22/11</p> <p>FREEDMAN [1] 2/16</p> <p>FRIEDLAND [1] 2/16</p> <p>front [5] 28/17 30/1 32/9 41/1 41/3</p> <p>fulcrum [1] 40/7</p> <p>full [1] 19/3</p> <p>fully [1] 34/13</p> <p>function [1] 23/19</p> <p>Furthermore [1] 8/12</p>	<p>had [7] 6/8 10/14 27/25 28/22 29/12 33/9 34/20</p> <p>half [3] 14/24 32/4 37/15</p> <p>handle [1] 37/20</p> <p>handles [1] 27/8</p> <p>HANEN [1] 1/10</p> <p>happened [1] 22/23</p> <p>happy [1] 6/5</p> <p>hard [2] 17/23 43/1</p> <p>has [20] 5/5 7/2 8/17 10/25 16/18 17/14 18/17 22/5 24/10 26/9 27/2 27/9 27/13 37/16 37/21 37/24 37/25 39/5 40/15 41/12</p> <p>hasn't [2] 8/11 19/19</p> <p>hate [1] 14/19</p> <p>have [146]</p> <p>having [3] 16/1 39/13 40/24</p> <p>he [20] 5/22 11/25 17/14 22/14 22/15 22/16 22/19 22/20 22/21 22/23 22/25 23/5 24/8 24/8 24/10 30/4 36/19 36/19 36/20 36/21</p> <p>he's [2] 16/17 22/23</p> <p>heads [1] 35/11</p> <p>heads-up [1] 35/11</p> <p>hear [4] 12/4 12/25 13/1 16/16</p> <p>heard [4] 6/17 36/9 36/11 41/19</p> <p>hearing [9] 1/10 5/4 6/1 6/7 12/24 24/13 24/13 28/22 42/11</p> <p>hearsay [1] 7/15</p> <p>heart [2] 34/24 43/10</p> <p>Heights [1] 3/5</p> <p>help [2] 13/24 19/2</p> <p>helpful [1] 8/19</p> <p>helping [1] 15/24</p> <p>HENNESSEY [2] 3/21 4/4</p> <p>here [22] 6/18 8/18 12/5 16/9 16/10 16/10 17/12 19/25 20/6 20/20 21/15 25/19 26/19 30/24 32/4 33/19 34/15 37/9 40/6 41/21 41/24 42/19</p> <p>here's [2] 21/14 33/9</p> <p>Hey [6] 14/8 29/21 34/11 38/13 39/22 40/19</p> <p>Heyward [1] 1/16</p> <p>hiding [1] 23/15</p> <p>HILDER [1] 2/13</p> <p>him [2] 30/9 32/19</p> <p>his [7] 10/1 22/13 22/20 23/2 31/16 32/20 43/8</p> <p>histories [2] 19/11 19/24</p> <p>history [1] 17/10</p> <p>hold [2] 26/2 37/1</p> <p>holding [1] 22/24</p> <p>holes [1] 29/20</p> <p>holidays [1] 42/19</p> <p>hone [1] 35/8</p> <p>Honor [28] 6/11 8/22 12/6 13/13 14/19 15/5 17/1 17/12 20/20 23/12 23/24 24/8 25/2 25/6 25/14 26/16 26/23 30/23 31/20 33/24 37/2 38/1 40/6 41/18 42/7 42/14 43/12 43/13</p> <p>Honor's [1] 31/4</p> <p>HONORABLE [1] 1/10</p> <p>hoodwinked [2] 15/13 20/7</p> <p>hope [2] 6/2 16/3</p> <p>horse [1] 17/13</p> <p>horse's [1] 32/5</p> <p>house [3] 28/3 33/2 42/2</p>
<p>F</p> <p>face [1] 6/25</p> <p>Facebook [1] 15/17</p> <p>fact [8] 9/4 10/5 13/19 19/18 19/21 20/7 37/6 37/9</p> <p>factor [1] 7/10</p> <p>factors [6] 7/1 7/2 7/3 7/18 7/19 24/9</p> <p>facts [1] 21/20</p> <p>fails [1] 24/11</p> <p>fair [4] 17/11 35/4 35/21 39/9</p> <p>false [3] 17/16 18/1 29/23</p> <p>far [8] 10/23 14/4 18/14 21/7 22/4 29/4 30/3 34/21</p> <p>favorite [1] 43/5</p> <p>FBI [2] 18/17 34/7</p> <p>feeling [1] 11/15</p> <p>Fertitta [2] 3/4 3/4</p> <p>fight [2] 12/24 16/4</p> <p>figure [1] 35/25</p> <p>file [2] 7/13 10/16</p> <p>filed [2] 5/10 5/17</p> <p>filter [1] 11/12</p> <p>final [1] 15/10</p> <p>financial [2] 39/7 39/19</p> <p>find [4] 8/3 31/9 31/23 38/11</p> <p>fine [3] 24/5 31/15 32/25</p> <p>FINRA [2] 13/16 18/4</p> <p>fire [1] 15/22</p> <p>firm [8] 2/8 3/4 3/14 3/18 13/16 18/4 18/8 24/19</p> <p>firms [1] 13/23</p> <p>first [4] 6/17 22/9 22/13 41/9</p> <p>fishing [4] 7/8 16/5 25/4 33/25</p> <p>fits [2] 16/12 26/12</p> <p>flatout [2] 17/15 18/1</p> <p>Fleites [1] 3/7</p> <p>Floor [1] 2/17</p> <p>Florida [1] 3/9</p> <p>flush [1] 37/8</p> <p>focus [1] 36/23</p> <p>following [1] 32/13</p> <p>foot [1] 37/9</p> <p>Ford [13] 2/4 2/4 8/22 16/10 16/16</p>	<p>G</p> <p>game [3] 17/11 28/17 39/9</p> <p>GARY [1] 3/3</p> <p>gave [1] 17/24</p> <p>general [1] 29/2</p> <p>generally [1] 19/10</p> <p>generous [1] 40/10</p> <p>get [60]</p> <p>gets [2] 22/25 32/6</p> <p>getting [5] 21/12 31/10 31/13 43/2 43/9</p> <p>girlfriend [1] 21/25</p> <p>give [8] 7/4 30/20 31/9 38/9 38/13 39/3 41/10 41/14</p> <p>given [4] 10/25 17/25 18/1 19/18</p> <p>giving [7] 25/10 35/11 35/21 35/23 39/23 40/24 41/6</p> <p>go [30] 5/7 9/17 10/3 11/7 14/7 14/15 14/21 15/23 16/19 16/25 19/17 22/12 22/21 25/25 26/8 28/3 29/10 29/20 31/17 33/17 35/12 35/22 36/25 38/6 38/10 39/14 39/22 40/4 41/14 42/22</p> <p>goes [3] 10/1 27/17 35/6</p> <p>going [75]</p> <p>gone [1] 8/3</p> <p>good [5] 6/11 6/15 23/11 26/9 36/10</p> <p>google [2] 7/22 13/11</p> <p>got [4] 15/13 22/9 37/19 38/16</p> <p>gotten [1] 20/10</p> <p>government [24] 1/15 1/20 5/15 6/5 6/8 10/9 10/25 11/14 11/17 12/4 16/10 21/12 23/6 26/5 26/17 27/2 27/9 27/13 30/5 30/22 39/5 39/11 39/20 41/25</p> <p>government's [3] 8/25 26/3 26/12</p> <p>granting [1] 26/5</p> <p>ground [2] 21/1 36/6</p> <p>group [1] 36/3</p> <p>guy [3] 15/23 16/22 22/5</p> <p>guys [3] 21/19 30/10 33/6</p> <p>H</p> <p>habits [3] 35/16 35/16 39/1</p>	

<p>H</p> <p>houses [14] 24/1 24/5 24/6 25/20 25/25 27/23 31/1 31/3 31/8 31/11 31/14 31/18 31/23 41/23</p> <p>HOUSTON [10] 1/2 1/5 1/18 2/14 3/5 3/13 3/16 3/19 3/24 4/15</p> <p>how [15] 14/12 16/15 19/17 19/24 20/4 20/18 23/3 25/2 26/21 35/25 39/10 39/10 39/12 40/4 42/2</p> <p>HRVATIN [1] 3/6</p> <p>hundred [2] 20/2 20/3</p> <p>hundred percent [2] 20/2 20/3</p> <p>hurting [1] 15/24</p>	<p>irrelevant [2] 11/2 19/22</p> <p>isn't [3] 16/22 23/25 33/2</p> <p>issue [29] 5/9 6/8 6/13 8/8 12/12 12/18 13/14 14/5 14/6 14/21 17/10 18/3 19/21 20/20 21/2 30/6 30/24 31/7 31/15 32/4 33/5 34/3 34/5 38/18 38/24 39/4 40/16 40/22 42/6</p> <p>issues [3] 31/17 33/3 39/12</p> <p>it's [21] 5/11 7/3 10/3 10/13 10/17 11/18 11/21 13/6 14/23 19/14 19/21 26/20 28/8 28/11 28/16 31/25 32/20 34/5 35/4 35/17 35/18</p> <p>itself [1] 20/22</p>	<p>Lewis [1] 3/11</p> <p>life [1] 37/12</p> <p>like [21] 7/12 10/4 10/21 12/1 14/20 15/5 18/24 20/14 23/12 23/15 27/2 28/23 29/2 29/5 30/21 33/23 36/19 36/19 36/20 39/17 42/4</p> <p>liked [5] 9/25 10/20 11/7 11/9 14/9</p> <p>limine [3] 33/12 33/20 34/1</p> <p>limit [2] 34/4 39/21</p> <p>limited [3] 29/14 39/12 40/5</p> <p>limiting [2] 42/25 42/25</p> <p>limits [3] 35/10 36/12 36/13</p> <p>Lincoln [1] 3/8</p> <p>line [4] 16/19 16/19 16/19 16/19</p> <p>link [2] 24/17 24/17</p> <p>Liolos [3] 1/21 6/12 6/15</p> <p>list [2] 6/22 10/19</p> <p>lists [2] 33/15 33/15</p> <p>literally [2] 10/25 43/8</p> <p>little [2] 32/14 32/15</p> <p>LLP [3] 2/16 3/22 4/5</p> <p>log [2] 13/20 24/22</p> <p>log-on [1] 24/22</p> <p>login [2] 9/18 38/13</p> <p>long [3] 22/16 33/7 43/2</p> <p>look [8] 8/5 9/13 14/8 15/22 16/11 30/9 39/22 39/22</p> <p>looked [1] 14/5</p> <p>looking [7] 5/24 20/12 20/13 23/3 26/1 38/25 39/2</p> <p>looks [1] 27/2</p> <p>loss [2] 28/10 32/23</p> <p>lost [3] 9/5 12/1 28/18</p> <p>lot [6] 19/9 19/13 19/20 20/11 35/24 40/1</p> <p>Louisiana [1] 1/17</p> <p>Lovett [1] 2/13</p> <p>Luis [1] 2/7</p>
<p>I</p> <p>I'm [53]</p> <p>IB [1] 24/20</p> <p>idea [2] 17/24 23/15</p> <p>identical [1] 23/6</p> <p>identified [1] 8/5</p> <p>identify [1] 19/5</p> <p>idiot [1] 22/6</p> <p>impanel [1] 35/19</p> <p>impeachment [1] 20/22</p> <p>important [1] 20/9</p> <p>impossible [1] 35/17</p> <p>improper [1] 25/7</p> <p>inadmissible [1] 21/6</p> <p>inch [1] 37/11</p> <p>included [1] 41/24</p> <p>includes [1] 29/19</p> <p>Including [1] 39/8</p> <p>incomplete [2] 13/25 18/6</p> <p>inconsistent [1] 29/6</p> <p>incorporate [1] 42/11</p> <p>indictment [4] 15/4 21/21 22/4 36/24</p> <p>individual [11] 9/5 10/1 11/14 12/13 21/4 22/19 23/1 23/5 28/10 33/3 40/23</p> <p>individual's [1] 40/8</p> <p>individually [1] 11/8</p> <p>individuals [8] 6/21 9/22 12/8 20/24 24/3 25/21 29/4 37/13</p> <p>individuals' [2] 11/23 14/1</p> <p>information [30] 8/6 9/14 9/23 9/24 10/12 11/5 11/19 13/1 15/12 16/8 18/9 20/21 21/4 23/13 23/15 25/5 27/22 28/12 30/7 30/12 31/9 31/25 32/5 32/12 34/21 35/3 37/12 38/4 38/20 39/18</p> <p>input [1] 25/16</p> <p>instance [2] 36/4 36/18</p> <p>instead [1] 24/2</p> <p>instruction [1] 42/12</p> <p>interacted [1] 9/22</p> <p>Interactive [1] 13/22</p> <p>Internet [6] 7/24 14/10 21/23 22/4 25/11 35/3</p> <p>interpret [1] 37/9</p> <p>interrupt [2] 14/19 14/20</p> <p>introduce [1] 30/1</p> <p>investing [1] 20/1</p> <p>investment [1] 39/18</p> <p>investments [1] 39/7</p> <p>involved [5] 16/2 21/12 25/15 26/15 30/20</p> <p>involving [1] 40/17</p> <p>ironic [1] 29/12</p>	<p>J</p> <p>JACKSON [2] 3/22 4/5</p> <p>James [1] 4/5</p> <p>January [3] 15/4 27/15 42/20</p> <p>January 2019 [1] 27/15</p> <p>January 2020 [1] 15/4</p> <p>John [3] 1/21 2/11 6/15</p> <p>judge [8] 1/11 5/9 6/15 19/4 26/24 30/17 37/10 41/16</p> <p>judicial [1] 14/22</p> <p>jump [2] 20/23 21/6</p> <p>juror [1] 37/8</p> <p>jury [3] 35/18 35/19 43/2</p> <p>just [41] 6/18 7/4 7/8 7/16 11/18 13/13 16/1 16/20 17/6 17/15 18/1 19/8 19/14 19/21 19/25 21/7 21/19 23/12 23/16 24/8 24/22 25/4 26/13 27/22 27/24 27/24 27/25 28/11 30/24 31/6 33/11 34/12 35/18 37/17 37/19 38/13 38/13 38/14 40/1 40/2 41/2</p> <p>JUSTICE [1] 1/22</p> <p>justification [1] 17/17</p>	<p>M</p> <p>mad [2] 21/11 21/11</p> <p>made [12] 7/23 8/1 8/2 8/7 9/21 10/10 10/10 12/3 28/11 28/17 29/19 33/5</p> <p>main [2] 5/20 24/20</p> <p>make [7] 9/16 11/15 13/7 16/23 37/6 37/7 39/15</p> <p>makes [1] 34/15</p> <p>making [3] 13/16 23/9 32/1</p> <p>Malone [3] 4/13 43/21 43/22</p> <p>manner [1] 35/23</p> <p>manually [1] 38/10</p> <p>many [7] 10/6 13/23 13/23 18/15 19/20 29/5 42/2</p> <p>Massachusetts [1] 2/17</p> <p>massive [1] 19/11</p> <p>material [4] 7/20 15/25 20/22 23/20</p> <p>MATLOCK [2] 2/6 22/6</p> <p>matter [5] 5/10 5/14 5/17 11/18 40/4</p> <p>matters [2] 39/7 39/19</p> <p>Matthew [2] 2/4 8/22</p> <p>may [20] 5/21 5/25 13/13 15/21 15/21 15/22 15/24 16/4 17/1 18/2 20/20 21/1 25/19 29/6 29/12 29/22 30/4 30/17 31/24 43/3</p> <p>maybe [4] 16/14 21/21 22/5 24/12</p> <p>Mayra [3] 4/13 43/21 43/22</p> <p>McKinney [2] 3/15 3/23</p>
	<p>K</p> <p>keep [1] 36/23</p> <p>key [1] 16/20</p> <p>keystroke [1] 10/19</p> <p>kind [3] 34/25 36/3 40/6</p> <p>knew [1] 34/9</p> <p>KNIGHT [1] 4/9</p> <p>knocked [1] 7/21</p> <p>know [49]</p> <p>knowing [2] 26/8 39/25</p> <p>known [1] 5/19</p> <p>knows [2] 5/15 33/19</p>	
	<p>L</p> <p>LANDY [1] 2/4</p> <p>large [1] 13/23</p> <p>last [2] 6/23 11/1</p> <p>late [1] 42/20</p> <p>later [4] 10/21 19/15 31/6 33/13</p> <p>Laura [1] 3/22</p> <p>LAW [6] 2/8 3/4 3/8 3/12 3/14 3/18</p> <p>lawsuit [3] 34/22 35/1 36/15</p> <p>lawyer [1] 36/5</p> <p>lead [1] 5/8</p> <p>least [5] 6/21 16/24 25/19 38/16 42/20</p> <p>let [11] 5/8 6/6 12/4 13/13 14/17 15/8 23/10 26/22 32/19 34/19 37/8</p> <p>let's [16] 10/1 10/2 16/12 21/18 25/15 25/15 25/25 26/2 26/3 26/18 33/3 33/4 33/21 36/23 42/1 43/9</p>	

<p>M</p> <p>me [16] 6/6 11/25 12/4 13/13 14/17 15/8 15/8 16/15 23/10 24/13 31/25 32/9 32/10 34/19 35/23 40/14</p> <p>mean [22] 15/12 15/15 15/18 15/21 15/22 16/3 17/10 21/10 21/24 22/5 25/19 33/13 34/23 35/9 35/17 36/7 36/8 36/20 39/21 39/23 40/16 42/24</p> <p>meaning [2] 38/9 38/22</p> <p>meaning in [1] 38/22</p> <p>means [2] 14/12 21/3</p> <p>measures [1] 5/5</p> <p>meat [2] 35/12 35/22</p> <p>mechanical [1] 4/17</p> <p>media [13] 7/23 8/2 9/8 9/9 11/20 12/20 12/22 17/4 24/7 24/15 37/16 40/7 40/24</p> <p>meme [3] 20/1 29/22 34/12</p> <p>memes [1] 23/9</p> <p>mentioning [1] 10/9</p> <p>message [1] 17/3</p> <p>messages [5] 9/21 39/6 39/11 39/14 39/16</p> <p>met [1] 8/11</p> <p>Miami [1] 3/9</p> <p>Michael [1] 4/5</p> <p>middle [2] 21/1 21/5</p> <p>million [1] 28/17</p> <p>millions [1] 11/1</p> <p>mind [2] 10/21 30/14</p> <p>minute [1] 14/17</p> <p>minutes [3] 25/1 26/13 43/8</p> <p>misleading [1] 29/23</p> <p>missing [1] 19/20</p> <p>misunderstand [1] 31/13</p> <p>misuse [1] 33/22</p> <p>MITCHELL [2] 3/21 4/4</p> <p>MK [1] 3/22</p> <p>modified [2] 27/16 29/7</p> <p>money [3] 9/5 12/1 19/2</p> <p>month [5] 21/21 25/12 25/13 27/17 34/15</p> <p>months [6] 15/14 19/15 21/19 27/18 29/13 34/12</p> <p>moon [1] 10/3</p> <p>moot [1] 32/3</p> <p>mooted [1] 32/6</p> <p>more [5] 11/2 11/14 12/15 21/20 39/4</p> <p>Moreover [1] 8/4</p> <p>morning [2] 6/11 6/15</p> <p>most [4] 26/9 28/11 40/10 40/10</p> <p>motion [2] 1/10 38/22</p> <p>motions [5] 33/12 33/20 33/20 34/1 35/25</p> <p>mouth [1] 32/5</p> <p>Mr. [40] 5/6 5/19 6/6 6/7 6/12 6/18 6/19 14/18 16/10 16/10 16/16 17/13 18/19 19/7 22/6 23/10 24/2 24/13 25/15 26/14 26/14 27/4 28/4 28/6 30/16 31/16 32/18 32/25 34/14 34/18 37/22 40/18 40/19 41/20 41/20 41/20 41/25 42/1 42/8 42/9</p> <p>Mr. Carter [2] 6/6 6/7</p> <p>Mr. Constantinescu's [1] 6/19</p> <p>Mr. Ford [10] 16/10 16/16 17/13 23/10 24/13 27/4 37/22 40/18 41/20 42/1</p> <p>Mr. Ford's [1] 5/19</p>	<p>Mr. Lioles [1] 6/12</p> <p>Mr. Matlock [1] 22/6</p> <p>Mr. Rosen [2] 26/14 41/20</p> <p>Mr. Rybarczyk [1] 19/7</p> <p>Mr. Rybarczyk's [1] 6/18</p> <p>Mr. Williams [17] 5/6 14/18 16/10 18/19 24/2 25/15 26/14 28/4 30/16 31/16 32/18 32/25 34/18 40/19 41/20 41/25 42/9</p> <p>Mr. Williams's [3] 28/6 34/14 42/8</p> <p>much [4] 13/2 21/20 34/15 35/18</p> <p>multiple [3] 14/3 25/17 37/18</p> <p>Murtha [1] 4/5</p> <p>must [1] 37/10</p> <p>my [20] 5/11 6/12 9/1 9/3 10/2 14/5 14/14 15/23 18/22 22/10 22/14 22/16 22/18 23/6 36/9 37/1 38/13 40/15 42/21 43/5</p> <p>myself [1] 16/2</p> <hr/> <p>N</p> <p>NAKD [1] 18/23</p> <p>name [2] 42/3 43/7</p> <p>named [1] 41/13</p> <p>names [2] 31/14 37/17</p> <p>narrow [8] 23/19 25/9 28/12 30/13 33/21 37/25 39/4 41/1</p> <p>narrowed [2] 17/8 27/21</p> <p>narrowing [1] 23/18</p> <p>narrowly [3] 29/14 40/25 41/3</p> <p>narrowly-tailored [1] 29/14</p> <p>NASDAQ [1] 18/10</p> <p>near [1] 8/10</p> <p>nearly [1] 27/5</p> <p>necessarily [3] 7/13 16/2 32/22</p> <p>need [10] 9/13 11/1 13/10 15/19 17/7 19/23 24/12 30/10 38/14 41/25</p> <p>needlessly [1] 43/4</p> <p>needs [2] 13/5 13/6</p> <p>Negating [1] 20/7</p> <p>negotiated [1] 32/18</p> <p>never [2] 14/10 36/11</p> <p>New [1] 1/23</p> <p>next [1] 37/16</p> <p>Nixon [14] 6/24 7/9 7/10 7/14 7/18 7/19 7/25 8/6 13/4 13/12 24/9 24/11 25/4 33/25</p> <p>no [10] 4/10 7/16 7/24 8/3 10/15 15/18 15/22 26/10 31/15 36/10</p> <p>nobody [1] 33/19</p> <p>Noncontroversial [1] 37/20</p> <p>normal [1] 20/14</p> <p>NORMAND [1] 2/16</p> <p>Northwest [1] 1/23</p> <p>not [64]</p> <p>nothing [3] 7/1 11/3 22/14</p> <p>now [24] 5/4 9/9 15/16 16/9 16/14 21/1 25/25 26/20 27/17 27/20 28/13 29/12 29/17 29/17 29/21 29/25 30/13 31/22 33/21 34/2 34/19 35/11 36/16 37/1</p> <p>nowhere [1] 21/5</p> <p>number [9] 7/21 27/11 27/14 27/21 32/11 35/4 35/5 36/19 39/4</p> <p>number A [1] 36/19</p>	<p>O</p> <p>O'BRIEN [1] 2/4</p> <p>O'Neal [1] 30/4</p> <p>object [1] 40/11</p> <p>objection [2] 26/4 26/4</p> <p>obtain [6] 9/11 9/25 10/8 25/1 28/12 28/24</p> <p>obtainable [1] 7/20</p> <p>obtaining [1] 14/4</p> <p>obvious [1] 29/10</p> <p>obviously [3] 5/4 11/13 42/10</p> <p>occurred [1] 18/7</p> <p>occurs [2] 18/12 18/12</p> <p>off [5] 5/8 14/9 18/12 31/7 31/8</p> <p>offensive [1] 23/4</p> <p>OFFICIAL [2] 4/12 43/23</p> <p>Oh [2] 15/23 33/14</p> <p>okay [4] 6/14 31/16 37/5 41/15</p> <p>once [3] 36/7 38/22 42/11</p> <p>one [50]</p> <p>ones [6] 8/5 11/15 19/25 24/20 24/21 34/16</p> <p>online [2] 8/3 9/25</p> <p>only [9] 15/20 18/7 19/10 20/10 22/6 22/8 24/10 25/20 38/1</p> <p>onus [1] 40/3</p> <p>open [5] 5/4 5/7 14/22 15/6 29/18</p> <p>option [7] 38/9 38/9 38/10 39/3 39/23 41/6 41/12</p> <p>options [1] 41/8</p> <p>order [5] 8/15 10/24 38/19 38/20 41/11</p> <p>ordering [2] 36/2 36/16</p> <p>originally [1] 27/14</p> <p>ostensible [1] 6/23</p> <p>other [16] 7/19 7/23 9/11 9/22 9/24 10/2 13/22 19/23 20/13 21/13 26/9 35/15 36/8 37/18 41/6 41/21</p> <p>ought [7] 21/13 23/20 26/10 26/14 42/5 42/5 42/17</p> <p>our [15] 5/16 5/17 6/20 6/21 11/11 12/11 14/13 14/23 19/17 25/6 29/16 30/18 32/2 38/8 42/24</p> <p>out [19] 7/22 14/23 15/9 15/9 19/25 20/2 20/8 20/14 21/16 21/19 22/1 22/16 31/21 31/24 33/3 34/11 35/25 36/2 37/8</p> <p>outdone [1] 22/21</p> <p>outside [3] 6/4 33/13 33/17</p> <p>outstanding [1] 11/22</p> <p>over [10] 6/6 11/7 12/11 12/16 16/5 18/2 20/6 20/6 36/8 38/6</p> <p>over-abusive [1] 16/5</p> <p>overall [1] 26/4</p> <p>overbroad [2] 7/7 7/11</p> <p>overburden [2] 21/9 21/13</p> <p>overburdened [1] 11/15</p> <p>overly [1] 11/17</p> <p>overruling [2] 25/8 26/4</p> <p>own [4] 22/13 22/20 23/14 29/23</p> <hr/> <p>P</p> <p>pages [1] 11/1</p> <p>pain [1] 42/23</p> <p>paralegal [1] 14/14</p> <p>parameters [1] 15/11</p> <p>part [3] 25/3 26/3 26/10</p> <p>parte [3] 5/10 5/14 5/17</p>
---	---	---

<p>P</p> <p>participate [1] 17/2</p> <p>participating [1] 35/1</p> <p>participation [1] 24/6</p> <p>particular [1] 18/21</p> <p>parties [6] 8/6 8/8 8/15 16/23 21/2 21/10</p> <p>party [2] 8/13 15/2</p> <p>pass [1] 31/7</p> <p>past [2] 11/7 24/23</p> <p>patently [2] 23/13 25/7</p> <p>pattern [2] 20/6 33/7</p> <p>PC [1] 2/13</p> <p>peace [1] 30/4</p> <p>people [18] 10/6 13/23 16/2 19/12 19/15 20/1 20/11 20/13 21/9 24/21 25/17 34/10 34/22 34/25 36/14 38/5 40/1 41/22</p> <p>people's [2] 10/9 19/24</p> <p>perceived [1] 39/10</p> <p>percent [3] 17/22 20/2 20/3</p> <p>period [11] 15/3 16/7 17/21 19/14 21/18 23/8 27/16 30/22 32/17 34/18 35/10</p> <p>periods [6] 12/12 12/17 17/15 29/15 30/20 34/5</p> <p>permits [1] 8/15</p> <p>PERRY [1] 2/6</p> <p>person [1] 17/21</p> <p>personally [1] 6/8</p> <p>pertain [2] 39/6 39/16</p> <p>phone [2] 11/16 38/12</p> <p>phones [1] 18/16</p> <p>pile [1] 11/1</p> <p>PJ [1] 2/6</p> <p>place [2] 10/24 38/19</p> <p>placed [2] 28/10 28/20</p> <p>plan [1] 43/9</p> <p>point [3] 9/4 30/23 31/6</p> <p>points [1] 28/7</p> <p>pop [1] 20/2</p> <p>position [3] 22/16 23/24 25/6</p> <p>possible [3] 9/17 10/14 42/18</p> <p>post [6] 10/1 11/7 11/9 11/24 12/10 17/4</p> <p>posted [5] 9/1 10/14 15/15 15/17 15/23</p> <p>potential [2] 8/9 29/19</p> <p>potentially [1] 11/10</p> <p>practical [1] 39/12</p> <p>preclude [1] 30/8</p> <p>precluded [3] 7/9 7/18 33/25</p> <p>prediction [1] 22/15</p> <p>preliminary [1] 12/11</p> <p>premise [1] 17/18</p> <p>presence [1] 6/4</p> <p>present [1] 41/8</p> <p>presentation [1] 14/13</p> <p>presentations [1] 38/7</p> <p>presented [1] 20/19</p> <p>press [1] 16/20</p> <p>presume [1] 38/23</p> <p>pretty [1] 36/10</p> <p>previously [1] 6/21</p> <p>price [2] 22/15 22/17</p> <p>prices [1] 23/9</p> <p>prices and [1] 23/9</p>	<p>primary [1] 36/7</p> <p>prior [2] 7/21 15/14</p> <p>privacy [3] 10/23 14/5 34/25</p> <p>private [4] 10/10 10/10 13/9 34/21</p> <p>probably [2] 33/11 36/1</p> <p>problem [6] 17/12 19/9 29/10 30/16 34/21 40/15</p> <p>proceedings [3] 4/17 4/22 43/18</p> <p>process [2] 21/3 26/19</p> <p>produce [5] 16/21 17/3 21/3 39/24 39/24</p> <p>produced [4] 4/17 12/14 17/25 18/18</p> <p>product [3] 15/11 37/4 37/4</p> <p>productions [1] 17/23</p> <p>proffered [1] 7/2</p> <p>profit [2] 28/10 32/22</p> <p>prosecutor [1] 43/5</p> <p>protective [4] 10/24 38/19 38/20 41/11</p> <p>prove [3] 10/6 23/3 25/23</p> <p>provided [2] 18/17 24/16</p> <p>proving [1] 19/17</p> <p>public [2] 34/23 37/12</p> <p>publicly [1] 38/22</p> <p>pumping [1] 29/23</p> <p>purchase [1] 9/3</p> <p>purchasing [1] 22/11</p> <p>purely [1] 13/6</p> <p>push [1] 40/2</p> <p>put [7] 8/7 15/13 23/22 26/18 35/10 36/12 36/13</p> <p>puts [1] 40/3</p> <hr/> <p>Q</p> <p>quash [1] 5/23</p> <p>Quentin [1] 2/12</p> <p>question [4] 12/10 13/21 29/21 32/1</p> <p>questions [1] 8/17</p> <p>quickly [1] 27/7</p> <p>quote [2] 20/11 20/18</p> <p>quote/unquote [2] 20/11 20/18</p> <hr/> <p>R</p> <p>rabbit [1] 29/20</p> <p>raised [1] 18/6</p> <p>raises [1] 14/21</p> <p>Ranch [1] 2/5</p> <p>rather [4] 15/24 29/7 41/6 42/15</p> <p>rating [1] 22/17</p> <p>reached [2] 23/2 27/5</p> <p>read [4] 9/2 11/8 11/24 39/15</p> <p>reading [2] 32/14 35/25</p> <p>reads [1] 40/5</p> <p>reality [1] 11/6</p> <p>realize [1] 43/8</p> <p>realizing [1] 42/18</p> <p>really [5] 9/6 11/18 13/24 14/5 38/25</p> <p>ream [1] 20/25</p> <p>reams [2] 7/15 25/4</p> <p>reason [5] 5/13 5/13 10/8 29/1 32/24</p> <p>reasonable [3] 7/20 23/14 26/2</p> <p>reasonably [1] 42/18</p> <p>reasons [1] 10/8</p> <p>receive [1] 10/16</p> <p>received [3] 8/13 13/14 17/14</p> <p>recessed [1] 26/25</p> <p>recognizing [1] 42/7</p> <p>recommendations [1] 38/8</p>	<p>recommended [1] 22/6</p> <p>record [3] 32/20 32/22 43/18</p> <p>recorded [1] 4/17</p> <p>records [29] 9/7 11/21 11/23 12/2 12/6 12/7 12/15 12/16 14/24 14/24 15/3 17/14 17/19 17/25 18/15 19/3 20/17 21/18 21/23 23/1 23/21 24/16 25/20 26/10 31/5 31/10 32/16 32/17 34/14</p> <p>recover [2] 10/17 19/2</p> <p>reflect [1] 18/11</p> <p>reflects [1] 18/7</p> <p>refused [1] 8/14</p> <p>refuted [1] 17/18</p> <p>regard [3] 13/25 22/10 29/7</p> <p>regarding [4] 13/17 27/12 39/18 40/12</p> <p>regards [1] 11/21</p> <p>reinforcement [1] 27/3</p> <p>related [1] 5/10</p> <p>release [1] 38/20</p> <p>relevance [3] 15/6 33/6 34/2</p> <p>relevancy [1] 8/8</p> <p>relevant [18] 12/7 12/18 13/4 15/3 15/15 15/18 16/7 17/5 17/14 17/21 19/17 19/25 20/18 33/13 34/16 37/7 39/10 40/14</p> <p>relied [2] 29/21 32/12</p> <p>rely [1] 36/22</p> <p>relying [1] 20/5</p> <p>remaining [1] 30/18</p> <p>repeat [1] 16/2</p> <p>reporter [3] 4/12 19/6 43/23</p> <p>reports [2] 33/16 34/7</p> <p>represent [1] 18/13</p> <p>representative [2] 16/18 23/7</p> <p>representatives [1] 41/21</p> <p>request [22] 5/19 7/17 8/16 13/5 13/16 14/23 15/7 18/3 18/10 26/3 27/7 27/18 30/2 32/7 32/20 37/17 37/21 37/24 37/25 39/4 40/11 42/14</p> <p>requested [1] 18/9</p> <p>requesting [2] 30/25 39/5</p> <p>requests [16] 7/5 7/21 8/10 8/18 8/19 9/10 12/20 14/23 15/19 17/7 20/25 24/3 25/10 27/6 32/7 33/4</p> <p>require [3] 21/4 29/25 40/23</p> <p>required [2] 7/14 7/25</p> <p>requires [2] 13/5 13/12</p> <p>requiring [1] 38/5</p> <p>resolution [2] 27/5 30/15</p> <p>resolve [1] 37/14</p> <p>resolves [2] 37/15 41/17</p> <p>respect [1] 30/19</p> <p>respond [2] 8/21 21/6</p> <p>response [1] 8/12</p> <p>responses [1] 38/16</p> <p>responsible [1] 18/23</p> <p>responsive [1] 38/11</p> <p>rest [2] 17/18 30/4</p> <p>restitution [1] 19/2</p> <p>result [1] 23/25</p> <p>resumed [1] 27/1</p> <p>retread [1] 36/6</p> <p>return [3] 42/8 42/15 42/20</p> <p>rewritten [1] 42/11</p> <p>Reyes [1] 2/7</p> <p>Rhonda [1] 26/22</p> <p>ridiculous [1] 23/16</p>
---	---	---

<p>R</p> <p>right [29] 5/4 5/10 8/25 10/2 10/4 12/5 14/2 14/7 15/25 16/16 16/17 16/22 18/22 19/13 23/21 23/23 24/23 26/20 30/13 33/3 34/2 34/25 35/2 35/11 35/12 36/17 36/17 41/19 43/11</p> <p>RMR [2] 4/13 43/22</p> <p>road [3] 2/5 3/8 25/18</p> <p>rolling [1] 26/19</p> <p>room [2] 4/14 33/19</p> <p>Rosen [4] 2/15 19/7 26/14 41/20</p> <p>Ross [1] 4/6</p> <p>round [1] 31/24</p> <p>route [1] 16/24</p> <p>routinely [1] 7/18</p> <p>rule [3] 8/15 21/17 34/3</p> <p>Rule 17 [2] 8/15 34/3</p> <p>ruling [3] 30/18 31/4 31/19</p> <p>run [1] 38/3</p> <p>Rusk [1] 4/14</p> <p>Ryan [1] 30/4</p> <p>RYBARCZYK [2] 2/11 19/7</p> <p>Rybarczyk's [1] 6/18</p>	<p>S</p> <p>said [16] 8/3 11/6 15/13 16/1 16/1 17/6 21/10 23/20 30/17 37/3 38/1 38/5 38/13 38/15 39/25 41/2</p> <p>sales [2] 12/3 28/21</p> <p>same [8] 10/7 14/3 18/12 20/6 28/24 30/6 34/18 36/6</p> <p>satisfies [1] 7/2</p> <p>satisfy [2] 7/1 7/3</p> <p>saw [1] 29/8</p> <p>say [19] 10/1 11/24 14/8 14/10 18/22 21/19 23/22 24/13 24/25 25/12 27/24 32/10 34/11 34/24 36/9 36/11 37/10 40/1 43/6</p> <p>saying [12] 10/2 11/16 11/22 12/25 13/1 16/16 17/13 22/19 23/25 33/6 39/11 39/25</p> <p>says [4] 22/6 22/23 39/22 40/20</p> <p>scenario [1] 26/12</p> <p>scheduled [1] 6/7</p> <p>scope [2] 31/20 38/1</p> <p>Scott [2] 1/21 6/11</p> <p>screenshot [3] 11/9 14/9 14/15</p> <p>screenshots [2] 18/16 18/25</p> <p>seal [2] 5/10 5/18</p> <p>search [1] 7/24</p> <p>searches [1] 7/22</p> <p>SEC [6] 12/9 13/16 13/19 18/4 18/8 19/2</p> <p>second [2] 38/17 41/12</p> <p>securities [1] 22/11</p> <p>see [19] 12/1 12/12 12/19 14/4 15/10 19/3 19/6 21/16 22/6 23/21 26/21 29/2 29/10 34/23 35/3 36/18 39/12 40/19 42/2</p> <p>seeing [2] 12/9 20/13</p> <p>seek [3] 7/5 7/12 8/4</p> <p>seeking [13] 5/22 5/23 8/6 9/6 12/16 12/21 18/22 27/8 27/11 27/14 28/22 32/24 38/1</p> <p>seems [2] 20/21 39/17</p> <p>seen [4] 14/10 29/3 34/7 42/8</p> <p>sees [1] 10/2</p>	<p>select [1] 41/14</p> <p>self [1] 28/9</p> <p>self-authenticating [1] 28/9</p> <p>sell [3] 12/1 19/13 20/5</p> <p>selling [3] 9/4 20/15 34/10</p> <p>send [3] 10/19 11/8 42/2</p> <p>sending [1] 11/10</p> <p>sense [1] 34/15</p> <p>sensibly [1] 34/4</p> <p>sensitive [2] 34/21 38/25</p> <p>sent [1] 11/6</p> <p>serious [2] 34/24 42/25</p> <p>served [3] 6/20 8/24 20/16</p> <p>set [2] 25/16 37/8</p> <p>sets [2] 14/24 25/17</p> <p>setting [1] 26/1</p> <p>seven [3] 7/5 27/6 40/22</p> <p>share [2] 8/14 42/12</p> <p>she [1] 14/15</p> <p>sheet [5] 13/14 18/2 18/10 19/20 20/12</p> <p>sheets [8] 12/9 13/14 13/15 13/24 17/20 18/5 19/9 19/18</p> <p>Shepherd [2] 3/12 3/18</p> <p>shift [2] 6/6 29/13</p> <p>should [11] 10/4 11/22 15/9 15/9 15/10 15/16 16/15 17/1 20/22 29/1 39/11</p> <p>show [9] 13/10 28/9 28/15 28/16 28/19 29/5 32/12 32/16 32/22</p> <p>showing [3] 7/24 8/3 13/7</p> <p>showings [1] 8/7</p> <p>side [6] 11/20 12/25 26/8 30/5 37/4 38/8</p> <p>sides [7] 26/10 35/21 37/5 40/3 42/21 42/23 43/9</p> <p>sift [1] 11/12</p> <p>significantly [1] 27/21</p> <p>simple [1] 24/18</p> <p>simplest [1] 28/11</p> <p>Sina [2] 3/14 3/14</p> <p>since [1] 7/2</p> <p>single [5] 11/9 17/3 17/4 17/21 29/18</p> <p>sir [1] 31/19</p> <p>sit [7] 16/11 16/11 17/8 21/14 25/9 26/13 36/10</p> <p>sitting [1] 42/18</p> <p>six [4] 21/21 27/25 37/19 40/22</p> <p>six weeks [1] 21/21</p> <p>Sixth [1] 2/17</p> <p>slice [1] 19/14</p> <p>small [1] 19/14</p> <p>smoke [1] 15/22</p> <p>so [64]</p> <p>social [13] 7/23 8/2 9/8 9/9 11/19 12/20 12/22 17/4 24/7 24/15 37/16 40/7 40/24</p> <p>sold [5] 9/3 12/13 19/15 19/16 23/1</p> <p>solution [1] 33/9</p> <p>some [23] 5/5 6/9 7/4 8/13 8/18 9/3 12/14 13/14 13/15 18/12 18/16 19/1 19/15 20/13 22/5 23/18 29/4 29/19 31/5 36/12 36/13 37/6 38/23</p> <p>somebody [4] 10/2 15/13 25/22 39/13</p> <p>something [12] 9/1 10/14 10/20 14/9 15/8 16/12 20/8 29/8 34/13 34/19 35/18 41/24</p> <p>somewhere [1] 23/15</p>
---	--	--

<p>S Case 4:22-cr-00612 Document 483 Filed 02/21/23 in TXSD Page 52 of 53</p> <p>substantive [1] 14/25 substantively [1] 5/23 such [3] 8/4 9/25 39/6 sufficient [1] 32/16 suggest [3] 23/10 31/21 38/17 suggested [1] 21/8 suggesting [2] 16/9 17/8 suggestions [1] 38/8 Suite [6] 1/17 2/9 3/9 3/15 3/23 4/6 summaries [1] 28/19 summary [2] 28/16 32/21 Sundays [1] 17/20 supportive [1] 36/21 supposed [1] 22/13 supposedly [3] 9/5 14/9 22/23 Supreme [1] 6/24 sure [5] 11/15 32/1 32/16 40/1 41/20 surprise [1] 26/9 surprises [1] 26/11 suspect [2] 22/25 29/3 symbol [1] 18/21</p>	<p>25/11 25/21 25/23 25/24 25/25 27/13 29/4 31/22 34/11 35/2 35/4 38/6 39/24 39/24 42/1 42/15 42/22 themselves [2] 15/21 17/17 then [24] 6/1 9/3 9/5 9/19 10/15 10/15 10/20 10/22 11/8 14/15 15/9 18/17 22/15 28/2 28/10 28/18 29/25 31/8 31/9 31/16 31/22 31/23 33/12 33/21 theoretically [1] 31/5 theory [5] 8/25 12/19 13/6 31/5 34/2 there [23] 7/15 7/15 7/16 9/10 10/6 13/5 14/6 14/8 14/23 15/21 15/21 16/17 19/10 24/14 26/11 27/6 31/24 32/23 35/15 36/6 37/14 38/18 41/24 there's [13] 7/15 9/17 9/24 10/24 14/5 16/17 16/20 18/6 19/21 26/10 30/13 36/18 40/2 these [63] they [155] thing [12] 10/24 11/1 19/23 26/5 27/17 28/5 28/24 35/12 35/22 37/16 38/17 41/10 things [2] 7/16 10/13 think [50] thinking [1] 25/18 third [4] 15/2 16/23 21/2 21/10 this [115] Thomas [1] 1/16 those [6] 7/1 7/2 15/3 23/1 32/9 42/8 though [1] 36/23 thought [9] 5/13 5/19 22/19 22/20 28/2 31/12 31/13 35/24 42/21 thousands [1] 19/12 threatening [1] 37/11 three [6] 15/14 21/19 22/15 25/3 27/18 31/24 three months [3] 15/14 21/19 27/18 three-part [1] 25/3 through [15] 8/19 11/7 11/11 11/12 12/9 20/12 29/23 34/17 38/10 38/25 39/15 39/22 40/4 41/14 42/22 throughout [1] 35/24 throwing [2] 21/19 36/2 tick [1] 8/19 ticker [4] 22/10 32/23 39/14 39/17 tickers [11] 12/12 12/17 13/15 16/6 18/5 19/20 27/19 29/15 30/21 34/4 41/14 tickers and [1] 12/12 time [30] 9/25 11/7 11/9 12/2 12/12 12/17 12/25 13/17 15/3 16/7 17/14 19/9 19/14 21/18 23/8 25/10 25/11 26/12 27/16 29/15 30/9 30/19 30/22 32/17 34/5 34/18 35/9 36/6 36/7 43/2 timely [2] 31/22 32/1 times [2] 9/21 20/5 timing [1] 35/10 today [3] 5/12 31/19 42/11 TOM [1] 3/10 ton [1] 7/16 tongue [1] 37/1 too [7] 13/2 15/11 21/7 26/15 30/3 35/6 35/18 took [5] 14/9 14/15 17/4 18/16 19/1 topic [1] 30/15 total [1] 25/1 totally [1] 32/3</p>	<p>trade [21] 11/21 12/1 13/17 13/20 14/1 17/14 18/14 23/1 24/16 26/11 28/14 29/18 30/9 30/10 30/20 30/22 33/5 33/14 33/15 33/16 35/2 traded [11] 12/9 12/13 13/21 13/22 17/21 18/21 26/11 28/17 28/18 29/4 39/10 traders [1] 20/14 trades [4] 19/1 28/10 28/20 35/17 TradeZero [1] 24/21 trading [61] trading in [1] 15/14 transcript [3] 1/10 4/17 43/17 transcription [1] 4/17 trial [13] 6/25 7/21 14/7 20/19 26/1 26/8 32/2 33/18 38/23 42/16 42/24 43/2 43/3 tried [6] 7/24 8/3 9/9 9/16 13/10 35/9 Trojan [1] 17/13 true [1] 14/20 try [8] 10/6 16/15 35/5 35/17 35/22 35/24 41/1 42/17 trying [8] 11/4 15/1 15/3 21/9 25/23 30/13 34/3 35/25 turned [2] 12/11 12/15 tweet [2] 22/5 29/8 tweeted [1] 20/8 tweeting [6] 21/25 22/13 22/20 23/9 34/8 35/16 tweets [6] 9/20 21/24 22/16 22/17 22/22 24/6 Twenty [1] 2/17 Twenty-Sixth [1] 2/17 twice [1] 18/1 Twitter [25] 7/13 9/1 9/10 9/18 9/19 10/1 10/9 10/12 10/15 10/18 11/24 12/23 15/17 17/3 17/4 23/8 24/17 27/8 37/18 37/19 37/21 37/24 39/3 40/9 41/9 Twitter's [1] 9/13 two [25] 9/6 9/8 9/10 10/13 10/21 11/8 16/17 17/19 19/10 19/11 19/21 20/2 20/10 21/19 22/22 27/22 31/24 35/5 35/19 38/7 38/7 38/10 41/8 42/19 42/24 two days [1] 19/11 two weeks [2] 10/21 42/19 two years [1] 11/8 type [1] 7/17 types [1] 27/22 typically [1] 24/21</p> <p>U</p> <p>U.S [2] 4/14 6/5 ultimately [3] 15/10 15/24 19/2 under [10] 5/10 5/18 7/14 7/18 7/25 25/1 25/4 31/5 33/25 34/3 underlying [1] 12/14 underscore [1] 17/16 understand [8] 5/6 16/14 23/24 23/25 26/3 33/5 33/6 41/10 understands [1] 25/6 Understood [1] 25/14 UNITED [8] 1/1 1/4 1/11 1/16 1/22 5/2 6/12 6/16 Unless [1] 8/17 unliked [1] 10/21</p>
<p>T</p> <p>table [2] 17/2 26/14 tack [1] 40/21 tailor [1] 16/12 tailored [4] 15/19 29/14 40/25 41/3 take [16] 5/11 11/10 11/23 15/22 16/11 16/24 21/15 26/13 30/7 30/16 31/8 33/3 35/14 38/14 40/3 43/3 talk [5] 21/15 33/4 41/25 41/25 41/25 talked [3] 25/11 34/18 42/4 talking [10] 10/6 18/3 18/14 18/18 18/19 20/1 27/20 34/13 35/10 39/2 target [1] 22/18 targeted [1] 11/6 Tate [1] 2/12 tax [1] 38/5 TD [7] 13/19 13/20 18/8 24/20 27/24 27/24 42/2 tech [1] 16/22 technology [1] 39/25 tell [5] 16/15 16/21 27/25 32/10 43/5 ten [2] 20/5 25/1 ten minutes [1] 25/1 tens [2] 11/1 19/11 test [1] 25/3 testify [3] 14/14 28/24 34/7 TEXAS [13] 1/1 1/5 1/18 2/5 2/9 2/14 3/5 3/13 3/16 3/19 3/24 4/7 4/15 texting [1] 40/18 than [8] 5/23 10/2 12/21 15/24 21/20 29/7 32/21 42/15 Thank [9] 8/22 25/14 26/23 26/24 41/16 41/18 43/11 43/12 43/13 that's [35] 7/9 7/17 11/19 12/2 13/11 14/6 14/20 15/15 15/18 15/20 16/13 16/19 17/5 17/7 17/10 20/16 21/8 22/1 23/2 24/18 27/18 28/4 28/16 28/21 31/12 31/15 32/14 32/15 33/24 36/10 37/20 39/2 40/21 41/2 43/8 their [48] them [41] 7/25 9/2 9/4 9/4 10/5 11/6 12/14 13/15 15/1 15/2 15/24 15/24 16/24 17/25 17/25 18/1 18/17 19/2 21/12 21/14 23/17 23/22 24/4 25/10</p>		

<p>U</p> <p>unliking [1] 10/22</p> <p>unquote [2] 20/11 20/18</p> <p>until [1] 34/1</p> <p>up [15] 5/12 11/24 14/7 15/13 15/24 18/1 24/23 25/16 25/23 25/23 28/16 35/11 36/6 36/9 38/3</p> <p>upon [2] 31/19 32/12</p> <p>us [22] 8/14 9/15 9/20 10/19 10/25 11/4 11/5 11/8 11/10 11/19 12/14 13/24 17/24 18/18 20/8 27/25 29/25 30/20 31/9 39/3 41/10 41/14</p> <p>usable [1] 32/2</p> <p>use [3] 13/23 24/21 35/15</p> <p>used [3] 27/23 27/24 27/24</p> <p>useful [1] 38/21</p> <p>using [1] 24/19</p>	<p>weigh [1] 19/8</p> <p>well [12] 5/19 12/16 12/24 14/5 16/19 18/19 24/12 25/24 28/4 29/22 31/25 33/18</p> <p>well-known [1] 5/19</p> <p>went [2] 13/19 18/2</p> <p>were [15] 5/23 8/7 10/6 11/4 20/7 20/11 27/14 27/23 28/20 28/22 29/13 31/12 31/13 34/10 43/8</p> <p>what [65]</p> <p>what's [1] 43/6</p> <p>whatever [6] 21/24 21/24 21/25 31/20 38/14 42/3</p> <p>when [19] 9/1 10/18 11/9 12/13 12/13 12/13 20/4 20/7 20/16 22/25 24/25 28/22 30/7 34/2 34/24 38/22 41/9 43/6</p> <p>where [3] 12/19 27/4 37/22</p> <p>whereas [1] 32/23</p> <p>wherewithal [1] 21/6</p> <p>whether [6] 5/14 13/21 21/11 28/20 35/7 39/16</p> <p>which [26] 5/19 7/6 7/9 7/14 8/5 8/14 9/7 13/4 14/7 14/12 16/22 16/22 17/20 18/11 18/21 24/9 27/7 29/19 31/6 32/5 32/15 32/21 34/16 35/24 38/17 40/12</p> <p>while [4] 15/6 16/9 21/14 32/13</p> <p>whistleblower [1] 6/23</p> <p>who [12] 6/10 8/21 17/21 19/6 20/24 21/3 21/4 22/20 27/25 28/24 29/4 31/17</p> <p>whoever [1] 14/14</p> <p>whole [2] 27/17 41/10</p> <p>whom [1] 6/22</p> <p>why [16] 7/4 7/11 16/10 16/22 16/23 17/7 19/5 19/16 19/16 20/16 21/8 26/13 31/6 33/21 33/23 34/14</p> <p>will [33] 5/8 6/12 8/15 10/18 10/21 14/21 16/1 16/21 19/1 21/17 23/1 24/22 24/23 27/7 27/16 28/8 28/9 28/15 28/19 28/24 30/12 31/6 32/22 33/20 35/10 35/15 37/8 38/1 38/18 41/9 41/12 42/12 43/5</p> <p>Williams [18] 2/12 5/6 14/18 16/10 18/19 24/2 25/15 26/14 28/4 30/16 31/16 32/18 32/25 34/18 40/19 41/20 41/25 42/9</p> <p>Williams's [3] 28/6 34/14 42/8</p> <p>willing [1] 11/13</p> <p>wind [1] 14/7</p> <p>window [1] 21/22</p> <p>within [3] 15/11 25/12 37/11</p> <p>without [1] 13/8</p> <p>witness [15] 6/22 9/2 13/21 14/16 19/1 22/9 22/13 33/15 36/11 36/18 39/15 39/21 39/23 41/5 41/6</p> <p>witness's [1] 11/2</p> <p>witnesses [21] 6/22 8/7 8/24 9/7 9/17 11/5 11/14 14/8 15/19 17/23 17/24 18/15 19/13 24/11 25/1 28/24 29/21 36/5 36/14 38/9 38/12</p> <p>witnesses's [2] 7/23 35/15</p> <p>word [1] 35/15</p> <p>work [6] 11/13 15/9 15/9 15/10 21/16 42/24</p> <p>worry [1] 25/22</p> <p>would [27] 6/5 8/16 9/20 9/20 10/11</p>	<p>10/15 11/9 12/1 15/5 16/3 18/11 18/24 22/7 23/5 28/23 29/2 29/5 30/20 30/21 31/20 32/3 38/21 39/2 39/17 41/5 42/20 43/6</p> <p>wouldn't [4] 16/23 16/23 34/8 34/9</p> <p>write [2] 33/19 33/22</p> <p>wrong [1] 18/1</p> <p>wrongful [1] 23/7</p> <hr/> <p>Y</p> <p>y'all [9] 15/9 17/8 21/14 21/16 24/12 25/9 26/2 26/13 35/11</p> <p>yeah [2] 15/23 28/4</p> <p>year [1] 7/6</p> <p>years [3] 11/8 24/23 30/11</p> <p>Yes [5] 6/11 14/19 26/16 31/19 37/15</p> <p>yet [1] 34/12</p> <p>Yifei [1] 1/22</p> <p>York [1] 1/23</p> <p>you [142]</p> <p>you're [1] 5/9</p> <p>you-know-what [1] 42/23</p> <p>your [45]</p> <p>Yours [1] 5/25</p> <p>yourself [1] 19/5</p> <hr/> <p>Z</p> <p>Zachary [1] 3/4</p> <p>Zadeh [2] 3/14 3/14</p> <p>Zheng [1] 1/22</p>
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